

No. 12827

United States
Court of Appeals
For the Ninth Circuit.

LEO KATZ, MINDA KATZ, OTTO KATZ, LEE-
MOND KATZ, PHIL KATES, DOROTHY
KATES, ELY ELIAS, BERTHA ELIAS,
JULIAN ELIAS and WALTER L. KEEN,
Doing Business as LEE'S DEPARTMENT
STORE,

Petitioners,

VS.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record

Petition for Review and Petition for
Enforcement of Order of National
Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles (13), Calif.,

Attorneys for Petitioner.

A. NORMAN SOMERS,

Assistant General Counsel, National Labor Re-
lations Board, Washington, D. C.,

Attorney for Respondent.

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No.: 21-CA-420.

Date Filed: 3/30/49.

Compliance Status Checked by: DB.

1. Employer Against Whom Charge Is Brought.

Name of Employer: The Federal Stores.

Address of Establishment (Street and No., City, Zone and State): 720 South Broadway, Los Angeles, California.

No. of Workers Employed: Approx. 15.

Nature of Employer's Business: Retail Clothing.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) subsections (1) and 8(a)(2) and 8(a)(3) of the National Labor Relations Act, and these unfair labor practices are unfair labor

practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets).

1. Employer has interfered with, restrained and coerced its employees at its store located at 720 South Broadway in the City of Los Angeles in the exercise of their rights to self organization and to determine a bargaining representative of their own choosing in violation of Section 8(a)(1).

2. Employer on and prior to March 29, 1949, has dominated, assisted and supported Amalgamated Clothing Workers of America, C.I.O., which is a labor organization within the meaning of Section 2(5) of the amended Act in violation of Section 8(a)(2) of the Act.

3. Employer has discriminatorily discharged employees for the purpose of encouraging membership in the Amalgamated Clothing Workers of America C.I.O., in violation of Section 8(a)(3). On or about March 29, 1949, employer discharged an employee, Murray Silverman, because he refused to sign an application for membership in said labor organization, and on that date also discharged at least one other employee because he objected to the check-off of union dues by the employer to be paid to the Amalgamated Clothing Workers Union.

3. Full Name of Labor Organization, Including

Local Name and Number, or Person Filing Charge:

Retail Clerks International Association, A.F. of L.

4. Address (Street and No., City, Zone, and State):
112 West Ninth Street, Los Angeles, California.
Telephone No. TUCKER 3844.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization).

6. Send copies of all papers to:

R. W. Gilbert, 117 W. 9th St., Los Angeles 15, California.

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

RETAIL CLERKS INTERNATIONAL ASSOCIATION,

ROBERT W. GILBERT and

LOUIS A. NISSEN,

By /s/ LOUIS A. NISSEN,

Attorneys for Retail Clerks
Int'l Association.

Date: March 30, 1949.

Wilfully false statements on this charge can be

punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

[Admitted in evidence as General Counsel's Exhibit No. 1-A.]

Received March 30, 1949.

United States of America
National Labor Relations Board

FIRST AMENDED
CHARGE AGAINST EMPLOYER

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No.: 21-CA-420.

Date Filed: 5/3/39.

Compliance Status Checked by: DB.

1. Employer Against Whom Charge Is Brought.

Name of Employer: The Federal Stores.

Address of Establishment (Street and No., City, Zone and State): 720 South Broadway, Los Angeles, California.

No. of Workers Employed: Approx. 15.

Nature of Employer's Business: Retail Clothing.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and 8(a)(2) and 8(a)(3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets).

1. Employer has interfered with, restrained and coerced its employees at its store located at 720 South Broadway in the City of Los Angeles in the exercise of their rights to self organization and to determine a bargaining representative of their own choosing in violation of Section 8(a)(1).

2. Employer on and prior to March 29, 1949, has dominated, assisted and supported Amalgamated Clothing Workers of America, C.I.O., which is a labor organization within the meaning of Section 2(5) of the amended Act in violation of Section 8(a)(2) of the Act.

3. Employer has discriminated against employees by discharging said employees for the purpose of encouraging membership in the Amalgamated Clothing Workers of America, C.I.O., and for the further purpose of discouraging membership in the Retail Clerks International Association, A.F.L., in viola-

tion of Section 8(a)(3) of the Act. On or about March 29, 1949, employer discharged employee Murray Silverman, employee Nathan Schwartz, and on or about April 27, 1949, employer discharged employee Marie Faruzzi, because said employees refused to apply for membership in the Amalgamated Clothing Workers of America, C.I.O.

4. Employer has discriminated against employees as to terms and conditions of employment by transferring such employees to less desirable employment for the purpose of encouraging membership in the Amalgamated Clothing Workers of America, C.I.O.

(Continued on attached sheet)

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge:

Retail Clerks International Association, A.F.of L.

4. Address (Street and No., City, Zone, and State):
112 W. Ninth Street, Los Angeles, California.
Telephone No. TUCKER 3844.
5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization).
6. Send copies of all papers to:

R. W. Gilbert, 117 W. 9th St., Los Angeles 15, California.

Telephone No.: TUCKER 9266.

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

RETAIL CLERKS INTERNATIONAL ASSOCIATION,

ROBERT W. GILBERT and

LOUIS A. NISSEN,

By /s/ ROBERT W. GILBERT,

Attorneys for Retail Clerks
Int'l Association.

Date: May 2, 1949.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

[Admitted in evidence as General Counsel's Exhibit No. 1-D.]

Received May 3, 1949.

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate

or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No.: 21-CA-481.

Date Filed: 6/17/49.

Compliance Status Checked by: RF.

1. Employer Against Whom Charge Is Brought.

Name of Employer: Lee's Department Store.

Address of Establishment (Street and No., City, Zone and State): 6501 Pacific Boulevard, Huntington Park, California.

No. of Workers Employed: 60.

Nature of Employer's Business: Retail Merchandise.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and 8(a)(2) and 8(a)(3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc).

1. Employer has interfered with, restrained and coerced its employees at its store located at 6501

Pacific Boulevard, City of Huntington Park, California, in the exercise of their rights to self organization and to determine bargaining representative of their own choosing in violation of Section 8(a)(1).

2. Employer has dominated, assisted and supported Amalgamated Clothing Workers of America, C.I.O., which is a labor organization within the meaning of Section 2(5) of the amended Act in violation of Section 8(a)(2) of the Act.

3. Employer has discriminated against employees in regard to tenure of employment by discharging said employees for the purpose of discouraging membership in the Retail Clerks International Association, A. F. of L., and for the further purpose of encouraging membership in the Amalgamated Clothing Workers of America, C.I.O., in violation of Section 8(a)(3) of the Act. Employer discharged employee Myrtle Gray on or about May 28, 1949, and further discharged employee Maurice W. Jackson on or about May 15, 1949, because said employees had expressed a dislike for the Amalgamated Clothing Workers and were known to favor the Retail Clerks International Association.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge:

Retail Clerks International Association, A.F.of L.

4. Address (Street and No., City, Zone, and State):
112 West Ninth Street, Los Angeles, California.
Telephone No. TUCKER 3844.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization).
6. Send copies of all papers to:
Robert W. Gilbert, 117 W. 9th St., Los Angeles 15, California.
Telephone No. TUCKER 9266.

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

RETAIL CLERKS INTERNATIONAL ASSOCIATION,

ROBERT W. GILBERT,

LOUIS A. NISSEN,

WILLIAM B. IRVIN,

By /s/ WILLIAM B. IRVIN,

Attorneys for Retail Clerks
Int'l Association.

Date: June 16, 1949.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

[Admitted in evidence as General Counsel's Exhibit No. 1-G.]

Received: June 17, 1949.

United States of America
Before the National Labor Relations Board,
Twenty-First Region

Case No. 21-CA-420

In the Matter of
FEDERAL STORES DIVISION OF SPEIGEL,
INC.

and

RETAIL CLERKS INTERNATIONAL ASSO-
CIATION, A. F. of L.

and

AMALGAMATED CLOTHING WORKERS OF
AMERICA, LOCAL UNION No. 81, CIO,
Party to the Contract.

Case No. 21-CA-481

In the Matter of
LEO KATZ, MINDA KATZ, OTTO KATZ, LEE-
MOND KATZ, PHIL KATES, DOROTHY
KATES, ELY ELIAS, BERTHA ELIAS,
JULIAN ELIAS AND WALTER L. KEEN,
d/b/a LEE'S DEPARTMENT STORE,

and

RETAIL CLERKS INTERNATIONAL ASSO-
CIATION, A. F. of L.,

and

AMALGAMATED CLOTHING WORKERS OF
AMERICA, LOCAL UNION No. 81, CIO,
Party to the Contract.

CONSOLIDATED COMPLAINT

It having been charged by Retail Clerks International Association, A. F. of L., that the Federal Stores Division of Speigel, Inc., hereinafter referred to as Respondent Federal, and Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, d/b/a Lee's Department Store, hereinafter referred to as Respondent Lee's, and each of them, have engaged in and are engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, Public Law 101—80th Congress, First Session, hereinafter called the Act; and the General Counsel of the National Labor Relations Board, on behalf of the Board, having issued an Order of Consolidation, the Regional Director for the Twenty-First Region, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, hereby issues this Consolidated Complaint and alleges as follows:

1. Respondent Federal Stores Division of Speigel, Inc., a corporation organized and existing by virtue of the laws of the State of Delaware, maintaining and operating stores in the States of California and Nevada, is now and at all times material herein, has been engaged in the department store business in the City of Los Angeles, California.

2. Respondent Federal, in the course and conduct of its business operations aforesaid, causes and

at all times herein material has caused large quantities and valuable amounts of equipment, materials, supplies and merchandise to be transported from and through states of the United States other than the State of California to its place of business in Los Angeles, California. During the calendar year ending December 31, 1949, said Respondent Federal purchased equipment, materials, supplies and merchandise valued at approximately \$3,000,000, of which sum 50 per cent of the dollar value of such equipment, materials, supplies and merchandise was shipped directly to it from points outside the State of California. During the same period, said Respondent Federal has caused large quantities of merchandise to be sold and transported in interstate commerce from its aforementioned department stores into and through states of the United States other than the State of California.

3. Respondent Leo Katz, Minda Katz, Otto Katz, Leomond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, d/b/a Lee's Department Store, a copartnership with its principal place of business in Huntington Park, California, is now and at all times material herein has been engaged in the department store business in Huntington Park, California.

4. Respondent Lee's, in the course and conduct of its business operations aforesaid, causes and at all times material herein has caused large quantities and valuable amounts of equipment, materials, supplies and merchandise to be transported from and

through states of the United States other than the State of California to its place of business in Huntington Park, California. During the 12-month period ending November 24, 1948, Respondent Lee's purchased equipment, materials, supplies and merchandise valued at approximately \$1,000,000, of which sum 30 per cent of the dollar value of such equipment, materials, supplies and merchandise was shipped directly to it from points outside the State of California.

5. Respondent Federal is and at all times material herein has been engaged in commerce within the meaning of the Act.

6. Respondent Lee's is and at all times material herein has been engaged in commerce within the meaning of the Act.

7. Retail Clerks International Association, A. F. of L., is a labor organization within the meaning of Section 2, subsection (5) of the Act.

The Amalgamated Clothing Workers of America, Local Union No. 81, CIO, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

8. Respondent Federal and Respondent Lee's, by their officers, agents and employees while engaged in their business as described in paragraphs 1, 2, 3 and 4, above, on or about December 17, 1948, entered into a joint, written, exclusive collective bargaining agreement with the Amalgamated Clothing Workers of America, Local Union No. 81, CIO,

covering wages, rates of pay, hours of employment and other conditions of employment of Respondent Federal's and Respondent Lee's employees: which agreement provided, in part, as follows:

“Article V. Membership in Union

“1. Members of the Employers' families, store managers, one head bookkeeper, one stenographer-secretary, and bona fide department heads who have the duty of directing the work of two or more employees in their respective departments, shall not be subject to the jurisdiction of the Union and shall be excepted from all provisions of this agreement.

“2. Subject to the exceptions specified in paragraph 1, of this Article, all full-time employees at present employed in the classifications specified in Article II. shall become members of the signatory Union within fifteen (15) days after the effective date of this agreement or shall be discharged by the Employer.

“3. Subject to the exceptions specified in paragraph 1 of this Article, all full-time employees in the classifications specified in Article II. and who are hired after the effective date of this agreement shall become members of the signatory Union within 30 days after the date of their employment or shall be discharged by the Employer.”

At all times since on or about December 17, 1948. Respondent Federal, Respondent Lee's and Amalga-

mated Clothing Workers of America, Local Union No. 81, CIO, have enforced and given effect to said agreement and all renewals and extensions thereof and have required membership in the Amalgamated Clothing Workers of America, Local Union No. 81, CIO, as a condition of employment.

9. At all times since on or about October 30, 1948, Respondent Federal and Respondent Lee's have interfered with, restrained, coerced and deprived their respective employees of their rights by deducting from the pay of their respective employees monthly union dues without the written authorization or consent of their respective employees.

10. Respondent Federal, by its officers, agents and employees, did discharge Mandel Silverman and Nathan Schwartz on or about March 29, 1949; and Marie Faruzzi on or about April 27, 1949, and each of them, and at all times since has refused and failed and does now refuse and fail to re-employ them, and each of them, for the reason that they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection and because they refused to permit the employer to deduct union dues from their compensation.

11. Respondent Lee's, by its officers, agents and employees, did discharge Maurice W. Jackson on or about May 15, 1949, and at all times since has refused and failed and does now refuse and fail to reemploy him for the reason that he engaged in concerted activities with other employees for the pur-

poses of collective bargaining and other mutual aid and protection.

12. The aforesaid agreement entered into between Respondent Federal, Respondent Lee's and Amalgamated Clothing Workers of America, Local Union No. 81, CIO, and all renewals and extensions thereof, by reason of the allegations set forth in paragraph 8 hereof, and by reason that no union authorization election in accordance with Section 9 (e) of the Act has been held, is illegal and invalid.

13. Respondent Federal, while engaged in its business as described above, by its officers, agents and employees has since on or about October 30, 1948, interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act by various acts and statements including, without limitation, the following:

(a) Attempting to influence its employees against their free choice of union affiliation;

(b) Urging, persuading and warning its employees not to become or remain members of the A. F. of L.;

(c) Demanding that its employees become and remain members of the Amalgamated Clothing Workers of America;

(d) Threatening to discharge its employees if they should refuse to submit to dues check-off in favor of the Amalgamated Clothing Workers of America; and

(e) By requiring its employees to become members of the Amalgamated Clothing Workers of America against said employees' will.

14. By the acts and conduct set forth in paragraphs 8 and 9 hereof, Respondent Federal and Respondent Lee's have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a), subsections (1), (2) and (3) of the Act.

15. By the acts and conduct set forth in paragraph 10 hereof, Respondent Federal has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a), subsections (1) and (3) of the Act.

16. By the acts and conduct set forth in paragraph 11 hereof, Respondent Lee's has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a), subsections (1) and (3) of the Act.

17. By the acts and conduct set forth and described in paragraph 13 hereof, and by each of said acts, Respondent Federal has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act and Respondent Federal did thereby engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a), subsection (1) of the Act.

18. The activities of Respondent Federal and Respondent Lee's herein, as set forth in paragraphs 8 through 13 hereof, occurring in connection with the business of Respondent Federal and Respondent Lee's described in paragraphs 1 through 4 hereof,

have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

19. The aforesaid acts of Respondent Federal and Respondent Lee's, and each of them, as set forth in paragraphs 8 through 13 hereof, constitute unfair labor practices within the meaning of Section 8 (a), subsections (1), (2) and (3); and Section 2, subsections (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, this 31st day of January, 1950, issues this Consolidated Complaint against the named Respondents, and each of them.

/s/ HOWARD F. LeBARON,

Regional Director, National Labor Relations Board,
Twenty-First Region.

[Admitted in evidence as General Counsel's Exhibit No. 1-J.]

United States of America
Before the National Labor Relations Board,
Twenty-First Region

[Title of Causes.]

ORDER CONSOLIDATING CASES AND
NOTICE OF HEARING

The General Counsel for the National Labor Relations Board, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act, as amended, and to avoid unnecessary costs or delay,

Hereby Orders, pursuant to Section 203.64 (b) of National Labor Relations Board Rules and Regulations—Series 5, that these cases be, and they hereby are, consolidated.

Please Take Notice that on the 7th day of March, 1950, at 10:00 a.m., at Suite 607-13, Hearing Room No. 1, 111 West Seventh Street, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Consolidated Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Copies of the Charges and Amended Charges upon which the Consolidated Complaint is based are attached hereto.

You are further notified that, pursuant to Section 203.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor

Relations Board, an answer to the said Consolidated Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Consolidated Complaint shall be deemed to be admitted as true and may be so found by the Board.

In Witness Whereof, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Consolidated Complaint and Order Consolidating Cases and Notice of Hearing to be signed by the Regional Director for the Twenty-First Region on this 31st day of January, 1950.

[Seal] /s/ HOWARD F. LeBARON,
Regional Director, National Labor Relations Board,
Twenty-First Region.

[Admitted in evidence as General Counsel's Exhibit No. 1-K.]

Law Offices
Lowenthal & Elias
633 Roosevelt Building
Los Angeles 14, California

February 9, 1950

Mr. Howard F. LeBaron, Regional Director
National Labor Relations Board
111 West Seventh Street
Los Angeles 14, California

Re: Leo Katz, et al., dba Lee's Department Store, and Retail Clerks International Association, A. F. of L., and Amalgamated Clothing Workers of America, Local Union No. 81, CIO—Case No. 21-CA-481 (Consolidated with Case No. 21-CA-420).

Dear Mr. LeBaron:

I am writing to you on behalf of my client Lee's Department Store, one of the parties in the above proceeding.

The order consolidating cases and notice of hearing, together with consolidated complaint, which was served on my client on or about February 1, 1950, has just been placed in my hands.

I am in the process of moving my office and will not have an opportunity to prepare and file a responsive pleading within the time specified in the notice.

I discussed this matter with your office and was advised to make this written request to you for an

extension of the time within which to file an answer to the complaint.

Accordingly, I hereby respectfully request that I be allowed to and including the 24th day of February, 1950, within which to file an answer on behalf of my client Lee's Department Store.

Your consideration in granting this request will be greatly appreciated.

Yours very truly,

/s/ T. J. ELIAS.

TJE:am

[Admitted in evidence as General Counsel's Exhibit No. 1-M.]

Received February 10, 1950.

United State of America
Before the National Labor Relations Board,
Twenty-First Region

[Title of Causes.]

ORDER EXTENDING TIME FOR FILING
ANSWER TO CONSOLIDATED COMPLAINT

On motion of Attorney for Lee's Department Store, and for proper cause shown, it is hereby ordered that the time for filing answer to the Consolidated Complaint be, and it hereby is, extended to February 24, 1950.

Dated at Los Angeles, California, this 13th day of February, 1950.

[Seal] /s/ HOWARD F. LeBARON,
Regional Director, National Labor Relations Board,
Twenty-First Region.

[Admitted in evidence as General Counsel's Exhibit No. 1-N.]

United States of America
Before the National Labor Relations Board,
Twenty-First Region

[Title of Causes.]

ANSWER OF LEE'S DEPARTMENT STORE TO CONSOLIDATED COMPLAINT

Come Now, Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, d/b/a Lee's Department Store (herein referred to as Lee's Department Store), and for themselves alone and not for any other party to the above-consolidated actions, do hereby answer the consolidated complaint on file herein, and admit, deny and allege, as follows:

1. Admit the allegations contained in Paragraphs 3, 4 and 8 of said consolidated complaint.
2. Deny generally and specifically each and all of the allegations contained in Paragraphs 6, 9, 11,

12, 14, 16, 18 and 19 of said consolidated complaint, and the whole of said paragraphs.

3. For want of information or belief, deny generally and specifically each and all of the allegations contained in Paragraphs 1, 2, 5, 7, 10, 13, 15 and 17, and the whole of said paragraphs.

4. Deny generally and specifically each and all of the allegations contained in the document entitled "Charge against Employer" appended to said consolidated complaint and in which Lee's Department Store is named as Employer.

THEODORE J. ELIAS, and

HAROLD EASTON,

By /s/ THEODORE J. ELIAS,

Attorneys for Lee's
Department Store.

State of California,
County of Los Angeles—ss.

Walter Keen, being by me first duly sworn, deposes and says:

That he is one of the partners of Lee's Department Store and is one of the parties in the foregoing answer to consolidated complaint; That he has read the foregoing answer to consolidated complaint and knows the contents thereof, and that the same is true as to his own knowledge, except as to the matters that are stated on his information and belief, and as to those matters that he believes it to be true.

/s/ WALTER KEEN.

Subscribed and sworn to before me this 23rd day of February, 1950.

[Seal] /s/ HELEN HARDEN,
Notary Public in and for
Said County and State.

Affidavit of Service by Mail attached.

[Admitted in evidence as General Counsel's Exhibit No. 1-P.]

Received February 24, 1950.

United States of America
Before the National Labor Relations Board,
Twenty-First Region

[Title of Causes.]

AMENDMENT TO CONSOLIDATED COMPLAINT

Pursuant to authority granted by Section 203.17 of the Board's Rules and Regulations, Series 5, the Consolidated Complaint heretofore issued on January 31, 1950, is hereby amended by adding the following paragraph numbered 6 (a) :

6 (a). Respondent Federal and Respondent Lee's are members of Credit Stores Association which, on behalf of all its members, did enter into the contract described in paragraph 8 of the Consolidated Complaint. The members of Credit Stores Association, including Brown's, Star Outfitting Co.,

Federal Stores, Golden State Dept. Store, Kay's Department Stores, and Lee's Dept. Store, caused and continuously have caused large quantities and valuable amounts of merchandise to move in commerce within the meaning of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, this 28th day of February, 1950, issues this Amendment to Consolidated Complaint.

[Seal] /s/ HOWARD F. LeBARON,
Regional Director National Labor Relations Board,
Twenty-First Region.

[Admitted in evidence as General Counsel's Exhibit No. 1-R.]

United States of America
Before the National Labor Relations Board,
Twenty-First Region

[Title of Causes.]

AMENDED ANSWER OF LEE'S DEPARTMENT STORE TO CONSOLIDATED COMPLAINT, AS AMENDED

Come Now, Leo Katz, Minda Katz, Otto Katz, Leomond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, doing business as Lee's Department Store (hereinafter referred to as "Respondent Lee's"),

pursuant to Section 102.23 of the Rules and Regulations—Series 5 of the Board, and for themselves alone and not for any other party to the above-consolidated proceedings, do hereby answer the consolidated complaint on file herein, as amended, and admit, deny, and allege as follows:

(1) Admit the allegations of paragraph 3.

(2) Admit the allegations in paragraph 4 that during the twelve-month period ending November 24, 1948, Respondent Lee's purchased equipment, materials, supplies and merchandise valued at approximately \$1,000,000, of which sum thirty per cent of the dollar value of such equipment, materials, supplies and merchandise Respondent Lee's, in the course and conduct of its business operations, caused to be transported and shipped from and through States of the United States other than the State of California directly to its place of business in Huntington Park, California. Deny each and every other and remaining allegation in said paragraph 4.

(3) Deny that the agreement referred to in paragraph 8 was a "joint" agreement, and in this connection allege that Respondent Lee's entered into and executed said agreement as a separate and individual party and that Article XI of said agreement provides:

"It is understood that this agreement is executed by the Employers severally, and that no signatory Employer shall be liable for any breach of this agreement by any other Employer

and that no default or breach by any Employer shall constitute a default or breach by any other Employer.”

Admit the remaining allegations of said paragraph 8.

(4) Admit the allegation in paragraph 9 that since October 30, 1948, Respondent Lee's has, with some exceptions, deducted from the pay of its respective employees monthly union dues without the written authorization of such employees. Deny each and every other and remaining allegation in said paragraph 9.

(5) Admit that Respondent Lee's did discharge Maurice W. Jackson on or about May 15, 1949, as alleged in paragraph 11. Deny each and every other and remaining allegation in said paragraph 11.

(6) Admit, as alleged in paragraph 12, that no union authorization election in accordance with Section 9(e) of the Act has been held. Deny each and every other and remaining allegation in said paragraph 12.

(7) For lack of knowledge concerning said allegations, deny generally and specifically each and all of the allegations contained in paragraphs 1, 2, 5, 7, 10, 13, 15, and 17, and the whole of each of said paragraphs.

(8) Deny generally and specifically each and all of the allegations contained in paragraphs 6, 6(a), 14, 16, 18, and 19, and the whole of each of said paragraphs.

For a Second, Separate and Distinct Defense to said consolidated complaint as amended, and to the whole thereof, excepting only the unfair labor practice alleged in paragraphs 11 and 16, Respondent Lee's alleges:

(1) The unfair labor practices charged occurred, if at all, on December 17, 1948, when Respondent Lee's entered into the written collective bargaining agreement with the Amalgamated Clothing Workers of America, Local Union No. 81, CIO, referred to in paragraph 8 of the complaint herein. The charge forming the basis of the complaint issued herein was not filed with the National Labor Relations Board until June 17, 1949, and was not served on Respondent Lee's until on or after June 21, 1950.

(2) Said charges of unfair labor practice are, therefore, barred by the six months period of limitations specified in the proviso in Section 10(b) of the National Labor Relations Act.

Wherefore, Respondent Lee's prays that the General Counsel take nothing by reason of his complaint herein, and that the same be dismissed forthwith.

Dated: March 7, 1950.

LATHAM & WATKINS,

THEODORE J. ELIAS,

HAROLD EASTON,

By /s/ R. W. LUND,

Attorneys for Respondent Lee's, located at 6501
Pacific Blvd., Huntington Park, California.

State of California,
County of Los Angeles—ss.

Walter Keen, being by me first duly sworn, deposes and says:

That he is one of the partners of Lee's Department Store and is one of the parties to the foregoing proceeding; that he has read the foregoing Amended Answer of Lee's Department Store to Consolidated Complaint, as Amended, and knows the contents thereof; that the same is true to his own knowledge.

/s/ WALTER KEEN.

Subscribed and sworn to before me this .. day
of March, 1950.

.....

Notary Public in and for the County of Los Angeles,
State of California.

[Admitted in evidence as General Counsel's Exhibit No. 1-U.]

United States of America
Before the National Labor Relations Board,
Division of Trial Examiners, Washington, D. C.

[Title of Causes.]

GEORGE H. O'BRIEN,

For the General Counsel,

JESSE H. STEINHART, by

S. A. LADAR,

Of San Francisco, Calif.,

For the Respondent Federal.

LATHAM & WATKINS,

THEODORE J. ELIAS, and

HAROLD EASTON, by

RICHARD W. LUND,

Of Los Angeles, Calif.,

For the Respondent Lee's.

GILBERT, NISSEN & IRVIN, by

ROBERT W. GILBERT, and

WILLIAM B. IRVIN,

Of Los Angeles, Calif.,

For the Retail Clerks.

WIRIN, OKRAND & RISSMAN, by

ROBERT R. RISSMAN,

Of Los Angeles, Calif.,

For the Amalgamated.

INTERMEDIATE REPORT

Statement of the Case

Upon a first amended charge duly filed on May 2, 1949, and another charge duly filed on June 16, 1949, by Retail Clerks International Association, A. F. of L., herein called the Retail Clerks, the General Counsel of the National Labor Relations Board,¹ by the Regional Director for the Twenty-first Region (Los Angeles, California), issued a consolidated complaint dated January 31, 1950, against Federal Stores Division of Speigel, Inc., of Los Angeles, California, herein called the Respondent Federal, and Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias, and Walter L. Keen, d/b/a Lee's Department Store, of Huntington Park, California, herein called the Respondent Lee's. The complaint alleges that the respondent Federal and the Respondent Lee's had engaged and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1); (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act. Copies of the complaint, the respective charges, and notice of hearing were duly served upon the Respondent Federal, the Respondent Lee's, the Retail Clerks, and the Amalgamated Clothing

¹The General Counsel and the attorney representing him at the hearing are herein referred to as the General Counsel; the National Labor Relations Board as the Board.

Workers of America, Local Union No. 81, CIO, herein called the Amalgamated.

With respect to the unfair labor practices the complaint alleges in substance: (1) that the Respondent Federal and the Respondent Lee's are each engaged in commerce within the meaning of the Act; (2) that on or about December 17, 1948, the Respondent Federal and the Respondent Lee's entered into a joint written collective bargaining contract with the Amalgamated, containing a union-shop clause which has not been authorized by an election pursuant to Section 9 (e) of the Act; (3) that at all times since the execution of the aforesaid contract, both the Respondents have enforced the contract and have required membership in the Amalgamated as a condition of employment; (4) that at all times since on or about October 30, 1948, both the Respondents have deducted Amalgamated dues from the pay of their respective employees without the written consent of such employees; (5) that the Respondent Federal discharged employees Mandel Silverman and Nathan Schwartz on March 29, 1949, and Marie Faruzzi on April 27, 1949, and the Respondent Lee's discharged employee Maurice W. Jackson on May 15, 1949, and have since refused to reinstate them, because these employees had engaged in concerted activities with other employees and because they refused to permit their Employers to deduct union dues from their pay. In their respective answers, duly filed, both the Respondents deny that they are engaged in commerce within the meaning of the Act, or that they have engaged in any

of the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held on March 7 and 8, 1950, in Los Angeles, California, before the undersigned Trial Examiner. All of the parties were represented by counsel, who were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertaining to the issues. At the opening of the hearing counsel for the Respondent Lee's made motions to sever the cases herein consolidated for purpose of hearing, to dismiss the complaint in its entirety on the ground of nonjoinder of an indispensable party (the Amalgamated), and to strike various paragraphs of the complaint, or in the alternative, to dismiss the entire complaint. These motions were denied.² Permission was granted to the Respondent Lee's to file an amended answer and to the Respondent Federal orally to amend its answer on the record. At later stages of the hearing, counsel for the Respondent Lee's renewed his motions to strike

²The cases at bar were properly ordered consolidated for purposes of hearing and no prejudice is shown to have resulted to any of the parties. I am therefore of the opinion that the motion to sever was properly denied. See *Seamprufe, Inc.*, 82 NLRB 892, footnote 4.

I find no merit in the contention that the Amalgamated is an indispensable party respondent to this proceeding, and that, since it was not so joined herein, the complaint should be dismissed. Cf. *General Electric X-Ray Corporation*, 76 NLRB 64, 66-67; *Durasteel Company*, 73 NLRB 941, 946; and see the specific language in *E. L. Bruce Company*, 75 NLRB 522, at 526, dealing with this issue.

various paragraphs of the complaint. Rulings on these motions, as renewed, were reserved.

One of the aforesaid motions to strike, which was joined in by counsel for the Respondent Federal and the Amalgamated, was addressed to paragraph 9 of the Complaint, which alleges that both Respondents had "interfered with, restrained, coerced and deprived their respective employees of their rights by deducting from the pay of their respective employees monthly union dues without the written authorization or consent of their respective employees."³ The motion to strike the foregoing paragraph of the complaint was accompanied by a motion to strike all testimony taken during the hearing on the issue raised thereby. In support of these motions counsel argue that a violation of Section 302 of the Act⁴ does not per se constitute the commission of an unfair labor practice, and that consequently, it adds nothing to the complaint to allege such an unauthorized check-off even in connection with the enforcement of an illegal union-shop clause in a contract. They cite as authority for this con-

³It is admitted by both Respondents that during the period herein material they deducted union dues from the pay of at least some of their respective employees, and remitted such dues to the Amalgamated, without such "check off" having been authorized in writing by the employees so affected.

⁴Section 302 makes it a misdemeanor for an employer wilfully to withhold union dues from the pay of employees without having been authorized to do so in writing by each employee on whose account such deductions are made.

tention the Board's decision in *Salant & Salant, Inc.*, 88 NLRB No. 156. The General Counsel contends that the unauthorized check-off of union dues by the Respondents amounted to "an act of assistance (to the Amalgamated) independent of the language of Section 302 of the Act." In any event, he argues further, "the checking off of dues in violation of Section 302 when joined with an unlawful union shop provision is violative of Sections 8 (a) (1) and (2) of the Act. Compelled membership plus compelled check-off reinforce each other to assist and support the Union." (Underlineation in original; brief of General Counsel, p. 15.)

For reasons which will appear below in connection with my discussion of this matter, the motions to strike paragraph 9, and all evidence received in support thereof, are hereby denied. The issue with respect to the check-off of Amalgamated dues from the pay of the Respondents' employees will be dealt with on its merits.

In addition to the motions above disposed of, counsel for the Respondent Lee's, at the conclusion of the hearing, renewed a motion to strike from the complaint paragraphs 7, 8, 9, 12, and 14, and the reference in paragraph 19 to Section 8 (a) (2) of the Act. Ruling was reserved thereon. In sum, the motion goes to all portions of the complaint which allege that the Respondent Lee's committed unfair labor practices by entering into and enforcing the union-shop clause in its contract with the Amalgamated. The motion is based on the contention that, as to the Respondent Lee's, these allegations are

outlawed by the limitation contained in Section 10 (b) of the Act with respect to the issuance of a complaint based upon unfair labor practices occurring more than 6 months prior to the filing and service of a charge. The facts material to this issue are as follow: The contract containing the union-shop clause herein complained of was executed on December 17, 1948, and as is undisputed, was thereafter enforced by the parties at all times alleged in the complaint. A charge that the Respondent Lee's committed unfair labor practices by illegally assisting the Amalgamated was filed by the Retail Clerks on June 17, 1949, and was served upon the Respondent Lee's on June 21, 1949.

Counsel for the Respondent Lee's contends that the 6-month period referred to in Section 10 (b) began to run on December 17, 1948, when the contract was executed, and expired on June 17, 1949, 4 days prior to the date (June 21) when the charge was served on it. Consequently, he argues, any allegation that the Respondent Lee's committed unfair labor practices by entering into and enforcing the alleged illegal contract, is barred by the statute.

The General Counsel concedes that no finding of unfair labor practices by the Respondent Lee's may be predicated on the execution of the contract by that Respondent, since the contract was signed more than 6 months prior to the service of the charge upon said Respondent. He urges, however, that the Respondent Lee's admitted continued enforcement of the illegal union-security clause, which occurred within the 6-month period, constituted unfair labor

practices with respect to which findings may properly be made.

In support of his contentions, counsel for the Respondent Lee's cites the Board decision in Goodall Company, 86 NLRB No. 127. One of the issues in that case was the alleged grant of a wage increase by the employer to the employees in order to discourage membership in a union. The wage increase in question was made effective more than 6 months prior to the filing and service of the charge which instituted the proceeding. The Trial Examiner recommended dismissal of the allegation that the employer's aforesaid conduct constituted an unfair labor practice, on the ground that the statute of limitations embodied in Section 10 (b) of the Act barred the issuance of a complaint based on the wage increase. In so doing, the Trial Examiner considered and rejected the theory that the employer's continued payment of the wage increase during a period less than 6 months prior to the filing of the charge, might be deemed to constitute a continuing violation of the Act which could validly be alleged and found. No exceptions were filed to the foregoing recommendation of the Trial Examiner, and the Board, pursuant to its usual practice, adopted it, without thereby indicating whether or not it agreed with either the reasoning of the Trial Examiner or the result reached.⁵ It is plain, therefore, that

⁵Cf. Gulfport Transport Company, 84 N.L.R.B. No. 71, footnote 3, wherein the Board explicitly stated its disagreement with the Trial Examiner on a certain issue, but nevertheless refrained from reversing him on the point because no exception had been filed with respect thereto.

the Goodall decision is not a binding precedent on the point here in issue. In any event, the alleged violation of the Act treated in the Goodall case is essentially different from that here encountered. There the unfair labor practice alleged was the granting of a wage increase under circumstances which indicated that the increase was put into effect in order to forestall a union organizational campaign. The gravamen of such an unfair labor practice lies in the timing of the grant and announcement of the wage increase, not in its subsequent payment. The critical interference with the rights of employees takes place when, coincidentally with the organizational campaign, benefits are extended to the employees in order to induce them to refrain from organizing. That the continued payment of such a wage increase is not deemed to constitute an unfair labor practice is clearly indicated by the fact that the Board's customary remedy in such cases does not provide for a rescission of the wage increase.⁶

In the present case, the alleged unfair labor practices consist of the execution and subsequent enforcement of an illegal contract requiring membership in the contracting union as a condition of employment. Obviously, the rights of employees are just as seriously violated by the continued enforcement of that requirement as by its initiation. In

⁶See, for example, Williamson-Dickie Mfg. Co., 35 N.L.R.B. 1220; Fitzpatrick and Weller, Inc., 46 N.L.R.B. 28; Mellin-Quincy Mfg. Co., Inc., 53 N.L.R.B. 366.

other words, unfair labor practices are committed not only at the time such an illegal contract is entered into, but at all subsequent times when it is enforced, or even permitted to continue to exist.⁷ In recognition of this fact, the Board's remedial order, when such unfair labor practices are found, requires that the contract be set aside, and that recognition be withdrawn from the contracting union whose representative status was wrongfully strengthened by virtue of the illegal contract.⁸

The issue here being considered is analogous to that which arises when a contract lawful when entered into is kept in operation after some of its provisions have been declared illegal by subsequent statutory enactment, or when a strike legally called is continued after being prohibited by subsequent legislation. In such cases the Courts have held that the continuance in effect, respectively, of the contract and the strike, constituted violations of the statutes in question.⁹

⁷In this case, the Respondent Lee's admittedly enforced the union-shop clause in the contract subsequent to its execution. The Board has held that even where such an illegal clause has not been enforced, its "mere existence" acts as a restraint upon those employees who might not wish to join the contracting union. *Julius Resnick, Inc.*, 86 N.L.R.B. 38; *Hager and Sons Hinge Mfg. Co.*, 80 N.L.R.B. 136.

⁸*Julius Resnick case, supra.*

⁹See *N.L.R.B. v. Local 74, United Brotherhood of Carpenters and Joiners of America, A. F. of L.*, U. S. Court of Appeals for the Sixth Circuit, case

I am persuaded that although the statute of limitations set forth in Section 10(b) of the Act precludes any finding of unfair labor practices predicated on the Respondent Lee's execution of the contract with the Amalgamated, the continued enforcement of the aforesaid contract during a period less than 6 months prior to the service of the charge on the Respondent Lee's, constituted conduct on its part which may properly be found to have resulted in unfair labor practices. The Respondent Lee's motion to strike paragraphs 7, 8, 9, 12, and 14, and so much of paragraph 19 as refers to Section 8(a)(2) of the Act, from the complaint, is therefore denied.

Motions were also made at the close of the hearing by counsel for the Respondents Lee's and Federal and for the Amalgamated to dismiss the complaint on jurisdictional grounds. Ruling on these motions was reserved. The aforesaid motions are disposed of by the findings, conclusions, and recommendations hereinafter made.

During the hearing the General Counsel stated his inability to offer evidence at that time in support of paragraph 11 of the complaint, which alleges that the Respondent Lee's discharge of employee Maurice W. Jackson constituted an unfair labor practice. He moved to dismiss the aforesaid allegation without prejudice. This motion was denied, and the motion thereupon made by counsel

number 10943, decided April 4, 1950; and *United States v. Freight Association*, 166 U. S. 290, cited in that opinion.

for the Respondent Lee's to dismiss the aforesaid allegation was granted.

Following the testimony of the witness, Marie Faruzzi, counsel for the Respondent Federal moved to dismiss paragraph 10 of the complaint insofar as that paragraph alleges that Faruzzi was discharged on or about April 27, 1949, in contravention of the Act. This motion was denied. A motion by the General Counsel to amend paragraph 10 of the complaint by substituting "sometime in March, 1949," for "on or about April 27, 1949," as the date of Faruzzi's alleged discriminatory discharge, was granted.¹⁰

At the conclusion of the hearing the General Counsel's motion to conform the pleadings to the proof with respect to such formal matters as dates and the spelling of names was granted without objection.

The parties were afforded opportunity to present oral argument at the close of the hearing, and to submit briefs and proposed findings of fact and conclusions of law. Oral argument was waived, in lieu of which the Trial Examiner informally discussed the issues on the record with counsel. Briefs have been received from counsel for the General Counsel, the Respondents Lee's and Federal, and the Retail Clerks.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

¹⁰The issue of Faruzzi's discharge is discussed in a succeeding section of this Intermediate Report.

Findings of Fact

I. The Business of the Respondents

The Respondent Federal Stores Division of Spiegel, Inc., is, as its name implies, a division of Spiegel, Inc., a Delaware corporation which has offices in Chicago, Illinois. That corporation directly operates under its own name a chain of department stores throughout the United States. It also owns the "autonomous" chain of retail department stores herein named as Federal Stores Division of Spiegel, Inc. This chain consists of 20 stores, of which 19 are located in the State of California and 1 in the State of Nevada. These stores are operated for Spiegel, Inc., under an arrangement whereby the management of the Federal chain is centralized in an executive employed for that purpose on a contract basis.¹¹ This executive has full charge of all phases of the operations of the stores comprising that chain, and they are operated under his direction as an integrated entity, independent of the administration of the stores directly operated by the owning corporation.

In the operations of the aforesaid chain, the Respondent Federal annually purchases merchandise valued at approximately \$3,000,000, of which about 45 per cent originates from points outside the States of California and Nevada. Approximately 25 per cent of its annual purchases is bought

¹¹That is, the executive who operates the Federal chain is compensated by a share of the profits produced thereby.

in, and shipped to it, from points outside these States; about 20 per cent is purchased from jobbers in the State of California, but was manufactured outside California and Nevada. Practically all of the merchandise purchased and sold by the Federal stores is initially shipped to and warehoused in San Francisco, California, where its principal offices and warehouse are located, from where it is distributed, upon requisition, to the various department stores comprising the chain. Practically all of the merchandise sold by the individual stores is sold locally at retail. The total volume of retail sales of the chain amounts annually to approximately \$6,000,000, of which about 80 per cent is sold on credit.¹²

Among the stores operated by the Respondent Federal are two located in Los Angeles, California, and one in a suburb of that city, Huntington Park, California. The employees of these three stores are covered by the contract with the Amalgamated which is here in question. The Respondent Federal annually purchases merchandise for sale at these three stores valued at from \$250,000 to \$325,000.¹³

Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias,

¹²The foregoing data as to the Respondent Federal's annual volume of purchases and sales, and the percentages above set forth, apply to the year 1949.

¹³The annual volume of sales made by the Respondent Federal's Nevada store amounts to approximately \$250,000-\$500,000.

Julian Elias, and Walter L. Keen are copartners doing business as Lee's Department Store at Huntington Park, California. They operate a retail department store in that city which sells men's, women's and children's apparel, jewelry, housewares, shoes, furniture, and appliances. Approximately 60 full-time employees are employed by the Respondent Lee's in its said store.

During the year ending November 24, 1948, the Respondent Lee's purchased equipment, materials, supplies, and merchandise valued at approximately \$1,000,000, of which 30 per cent was shipped to it from points outside the State of California. Its sales are wholly within that State. About 70-75 per cent of its sales are on a credit basis.

Both the Respondent Federal and the Respondent Lee's deny the allegations of the complaint that they are engaged in commerce within the meaning of the Act, and each urges that in any event the business in which it is engaged is essentially of such a local nature that the Board should not assert jurisdiction over it.

The substantial volume of merchandise purchased by each of these Respondents and shipped to it across State lines in itself clearly brings both of them under the jurisdiction of the Board.¹⁴ The question which remains is whether the Board, in its

¹⁴N.L.R.B. v. Fainblatt, 306 U. S. 601; N.L.R.B. v. Bradford Dyeing Assoc., 310 U. S. 318; N.L.R.B. v. Van De Kamp's Holland-Dutch Bakers, Inc., 152 F. 2d 818 (C.A. 9); J. L. Brandeis & Sons v. N.L.R.B., 142 F. 2d 977 (C.A. 8); N.L.R.B. v. McGough Bakeries Corp., 153 F. 2d 420 (C.A. 5).

discretion, should assert the jurisdiction which it undoubtedly has over these Respondents. In his brief; counsel for the Respondent Lee's argues that the business operated by it, being "a typical small retail department store in a small community, * * * is the usual local business over which the Board regularly declines to assert jurisdiction." He cites a number of cases in which the Board has refused to take jurisdiction over business enterprises which made interstate purchases of materials and merchandise comparable in volume to that shipped to the Respondent Lee's. None of the cases cited, however, involved department stores. Counsel recognizes "that the Board has taken jurisdiction over some department stores," but contends that this has been in cases involving nation-wide chains of such stores, or where the department stores in question have made "substantial out-of-state mail order sales, or where they are of such size that their volume of business necessarily must affect interstate commerce to a great degree." Contrary to counsel's contentions, the Board has asserted jurisdiction over "small" department stores which make no out-of-state sales, and the volume of whose out-of-state purchases is even less than that shipped to the Respondent Lee's.¹⁵ In any event, the Board's

¹⁵E.g., *The P. B. Magrane Store, Inc.*, 84 N.L.R.B. No. 43 (one retail department store; total annual sales, \$770,000, all intrastate; total annual purchases, \$524,000, over 50 per cent of which obtained out-of-state); *Parks-Belk Co.*, 77 N.L.R.B. 429 (one retail store; total sales, all intrastate, \$250,000; total purchases, \$175,000, about 50 per cent of which was interstate).

practice is to assert jurisdiction over department stores to which a substantial volume of merchandise is shipped across State lines, even where the stores involved make all or substantially all of their sales within the State in which they are located.¹⁶

On the basis of the foregoing, I conclude and find that the Respondent Lee's and the Respondent Federal¹⁷ are both engaged in commerce within the meaning of the Act, and recommend that, "consistent with Board practice with respect to department stores, * * * jurisdiction should be exercised [over both Respondents] in this case."¹⁸

The General Counsel urges as an additional reason why the Board should exercise its jurisdiction over both the Respondents herein, the circumstance that they, together with other operators of retail stores, are parties to a collective bargaining contract with the Amalgamated covering a bargaining unit consisting of all the employees of the employer-signatories of the said contract. The aforesaid contract, which was entered into on December 17, 1948,

¹⁶Whitney's Department Store, 73 N.L.R.B. 1245; May Department Store Co., 71 N.L.R.B. 1214; J. L. Brandeis & Sons, 50 N.L.R.B. 325, 47 N.L.R.B. 614, 53 N.L.R.B. 352; M. E. Blatt Co., 38 N.L.R.B. 1210; Loveman, Joseph & Loeb, 56 N.L.R.B. 752; Block and Kuhl Department Store, 83 N.L.R.B. No. 63.

¹⁷The foregoing discussion applies with even more force to the Respondent Federal, which operates a chain of department stores across State lines, than to the Respondent Lee's.

¹⁸The P. B. Magrane Store, Inc., *supra*.

was purportedly executed "by and between signatory members of Credit Stores Association * * * as parties of the First Part, and [the Amalgamated], party of the Second Part," and provides for rates of pay and other terms and conditions of employment to apply to all of the employees of the six employers (including the two Respondents herein) who signed the agreement. Frank R. Guyon, the attorney who represented the employer-parties to the contract at the time it was negotiated, and in whose office the contract was mimeographed, testified at the hearing that he had been secretary of Credit Stores Association, which was organized in 1937; that the two Respondents herein, together with other retail credit stores had been members of that association; and that the organization, whose primary purpose (as revealed in its bylaws) was to represent its members in relations with labor unions, had ceased to have a formal existence after 1941, but had "been going along for some years, drifting along making use of the name, and so forth. * * *" He further testified that he had participated in the negotiations leading to the execution of the contract of December 17, 1948, as a representative of the employers, and had drafted the contract and secured the signatures of his clients thereto.

The Respondents contend that the Credit Stores Association was not actually in existence in a formal sense when the contract was entered into, and that, therefore, Guyon was acting on behalf of each of the employers individually at the time of the nego-

tiation and execution of the contract. I am of the opinion that it is unnecessary here to resolve the issue whether or not Credit Stores Association, as a formal entity, was in existence in 1947. The crucial circumstances relied on by the General Counsel are the facts that the contract was negotiated jointly between a group of employers (acting through their joint attorney, if not an association) and a union, in respect to a unit of employees consisting of all the employees of the employers involved. Identical terms and conditions of employment were agreed upon for all the employees comprising that unit.

The point made by the General Counsel is that even if the Board might have some doubt as to whether the Respondent Lee's, viewed in isolation, is the type of business enterprise over which it would wish to assert jurisdiction, the fact that its labor relations were carried on with respect to an appropriate bargaining unit consisting of the employees of a number of retail enterprises, including at least one (the Respondent Federal) which is clearly of a type and size over which the Board customarily exercises jurisdiction, should persuade the Board not to decline jurisdiction in this case over the Respondent Lee's. I agree with the position of the General Counsel.¹⁹

¹⁹Cf. International Typographical Union and the Baltimore Typographical Union No. 12, 87 N.L.R.B. No. 124, in which the Board said: "Nor do we consider it material, as the Respondents here suggest, that the record may not establish that the operation

II. The Organizations Involved

Retail Clerks International Association, A. F. of L., and the Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., are labor organizations admitting to membership employees of the Respondent Federal and the Respondent Lee's.

III. The Unfair Labor Practices

A. The execution and enforcement of the contract containing a union-security clause.

It is undisputed that on December 17, 1948, the Respondent Federal and the Respondent Lee's signed a collective bargaining contract with the Amalgamated which by its terms was to remain in effect until January 31, 1951. This contract concededly includes a clause reading as follows:

Article V. Membership in Union

2. Subject to the exceptions specified in paragraph 1 of this Article, all full-time employees at present employed in the classifications specified in Article II shall become members of the signatory Union within fifteen (15) days after the effective date of this agree-

of each and every individual employer whose employees form part of the bargaining unit here substantially affects interstate commerce within the meaning of the Act. It is sufficient for our purposes that the record discloses that the employee group comprising the unit, comprehensively viewed, is composed predominantly of employees whose employers' activities affect interstate commerce."

ment or shall be discharged by the Employer.

3. Subject to the exceptions specified in paragraph 1 of this Article, all full-time employees in the classifications specified in Article II and who are hired after the effective date of this agreement shall become members of the signatory Union within 30 days after the date of their employment or shall be discharged by the Employer.

The Respondents concede that the foregoing clause in the agreement has been enforced at all times since the contract was executed. It is also admitted by both Respondents that no election, as provided for in Section 9 (e), and required by the proviso to Section 8 (a) (3) of the Act, has been held among the Respondents' employees. Since the aforesaid union-shop clause in the contract was never authorized by the employees through such an election, the signing of the contract by the Respondent Federal,²⁰ and its subsequent enforcement by both the Respondent Federal and the Respondent Lee's clearly constituted unfair labor practices

²⁰As has been detailed in a preceding section of this Intermediate Report, the 6-month limitation embodied in Section 10(b) of the Act bars a finding of unfair labor practices based upon the signing of the illegal contract by the Respondent Lee's. Since the charge initiating this proceeding against the Respondent Federal was filed with the Board and served upon that Respondent within 6 months after the execution of the contract, no such bar exists with respect to findings based upon the signing of the contract by the Respondent Federal.

within the meaning of Section 8 (a) (1), (2), and (3) of the Act.²¹ I therefore find that by executing the aforesaid contract with the Amalgamated on December 17, 1948, and thereafter by keeping it in existence and enforcing it, the Respondent Federal lent illegal support and assistance to the Amalgamated in recruiting and maintaining its membership, in violation of Section 8 (a) (2) of the Act; discriminated in regard to the terms and conditions of employment of its employees, thereby encouraging membership in the Amalgamated, in violation of Section 8 (a) (3) of the Act; and by the foregoing conduct interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, in violation of Section 8 (a) (1) thereof. I further find that the Respondent Lee's, by keeping in existence and enforcing the aforesaid contract with the Amalgamated, at all times since December 22, 1948, lent illegal support and assistance to the Amalgamated in recruiting and maintaining its membership, in violation of Section 8 (a) (2) of the Act; discriminated in regard to the terms and conditions of employment of its employees, thereby encouraging membership in the Amalgamated, in violation of Section 8 (a) (3) of the Act; and by the foregoing conduct, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed

²¹Julius Resnick, Inc., 86 N.L.R.B. 38; Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., 81 N.L.R.B. 1052, 1054-1055.

by Section 7 of the Act, in violation of Section 8 (a) (1) thereof.

In his brief, counsel for the Respondent Lee's advances the argument that the complaint should be dismissed insofar as it alleges unfair labor practices based upon the unauthorized union-shop clause in the contract, because the charge which set this proceeding in motion as against the Respondent Lee's alleges "in only the most general terms a violation of Section 8 (a) (1) and 8 (a) (2), [and] makes no reference to any agreement or union-shop conditions or the lack of any UA election."²² For the reasons set forth in the Board's detailed discussion of the functions of a charge in *Cathey Lumber Company*, 86 N.L.R.B. No. 30, I find no merit in the foregoing contention.

An additional contention raised by counsel for the Respondent Lee's in his brief is, in sum, as follows: Preceding the execution of the contract here in issue, on December 17, 1948, there was in existence another collective bargaining contract between the same parties, dated January 31, 1947, which by its terms was to remain in effect until January 31, 1949. That agreement contained a

²²The charge in question alleges that the Respondent Lee's, among other things, "has interfered with, restrained and coerced its employees * * * in the exercise of their rights to self-organization and to determine bargaining representative of their own choosing in violation of Section 8(a)(1)," and that it "has dominated, assisted and supported [the Amalgamated] in violation of Section 8(a)(2) of the Act."

union-shop clause identical to the one included in the succeeding contract. Since the former agreement was entered into prior to the enactment of the Taft-Hartley Act, argues counsel, "the union-shop conditions therein were perfectly valid and legally effective after the passage of the Act (Section 102.)" In addition, he further contends, "the agreement of December 17, 1948, was merely an amendment of the 1947 agreement upon the wage-reopening. It only changed the wage rates in the 1947 contract. The union security provisions and other terms of the 1947 contract were not changed. * * * Hence the union shop provisions in the December 17, 1948, contract are not illegal." Section 102 of the Act, cited by counsel, answers his argument. That section provides that the performance of any obligation under a collective bargaining agreement entered into prior to June 23, 1947, the date of enactment of the amended Act, should not constitute an unfair labor practice thereunder, if the performance of such obligation would not have constituted an unfair labor practice under Section 8 (3) of the Act as it existed before its amendment, unless such agreement was renewed or extended subsequent thereto. The contract signed on December 17, 1948, replaced the preceding contract which by its terms expired on January 31, 1949. Thus it was clearly an extension or renewal of the prior contract, if not an entirely new one. Since, therefore, the contract entered into prior to the enactment of the Act as amended was extended or renewed subsequent to the enactment of the amend-

ments, the union-shop clause therein contained falls outside the savings clause of Section 102, and the argument advanced by counsel is clearly invalid.²³

B. The discharge of employees pursuant to the contract by the Respondent Federal.

1. Mandil Silverman.²⁴

Silverman was employed by the Respondent Federal as a salesman in one of its Los Angeles stores from about September, 1946, to about May, 1947, and again from about February 1, 1949, to on or about March 29, 1949, the date of his discharge.

During the afternoon of the last day of his employment, Silverman, while at work in the store, was handed an application card for membership in the Amalgamated by District Supervisor Cohen, who was in charge of the Respondent Federal's stores in that area, and was asked to sign it. Silverman refused to do so. Cohen thereupon left Silverman and conferred for a while with Store Manager Sells. The latter then informed Silverman that he (Sells) had been instructed to discharge him for refusing to join the Amalgamated, and told Silverman to get his belongings and leave the store immediately.

The foregoing findings are based on the credited testimony of Silverman, which was corroborated by

²³Cf. *Salant & Salant, Inc., supra.*

²⁴At the hearing Silverman gave his first name as "Mandil"; it is spelled in the pleadings as "Mandel."

that of the witness Diamond. Cohen admitted that he had instructed Sells to discharge Silverman, and that prior thereto he had asked Silverman to sign an Amalgamated card, which Silverman refused to do. He testified, however, that the incident involving the Amalgamated card occurred about a week prior to the date of Silverman's discharge, and that his decision to discharge Silverman on March 29 was prompted by the fact that he (Cohen) had been told that on that date Silverman had brought several organizers of the Retail Clerks into the store, who engaged in disorderly activities therein. Cohen also testified that it was his understanding that Silverman was, at the time of these events, a member of the Amalgamated, and that when Silverman refused to sign an Amalgamated card as requested, he (Cohen) remarked, "Well, you don't have to. I understand that you are already a member of the union." When asked whether or not he had ordered the discharge of Silverman for refusing to sign the Amalgamated card, Cohen answered, "I wouldn't say that. Maybe eventually I might have on that ground. I discharged Mr. Silverman for reasons of bringing strangers into our store and into our office, and disrupting our business." In view of the corroborated credible testimony of Silverman as to the sequence of events leading to his discharge, and the rather confused account given by Cohen, I regard the former's testimony as giving a more reliable version of those occurrences. As to the motive for Silverman's discharge, I also find Cohen's testimony unconvincing. Cohen admitted

that shortly before the date of Silverman's discharge, he had been informed that some of the employees in the store "were not members of the [Amalgamated], and that it would be necessary to see that they did join the union." And, admittedly, Cohen did thereafter ask Silverman to sign an Amalgamated application card, which Silverman refused to do.²⁵ Moreover, on the day following Silverman's discharge, another employee, as is found below, was discharged for his refusal to join the Amalgamated. The preponderance of the evidence convinces me, and I find, that Silverman was discharged by the Respondent Federal on or about March 29, 1949, because of his refusal to accede to the request of Cohen that he (Silverman) join the Amalgamated.

2. Nathan O. Schwartz.

Schwartz was employed as a salesman and window trimmer by the Respondent Federal in the same Los Angeles store in which Silverman was employed. He was hired in February of 1949, and was discharged on March 30, 1949.²⁶

On the morning of March 30, several of the em-

²⁵If, as Cohen asserted, it was his understanding that Silverman was already a member of the Amalgamated, it is difficult to understand why he found it necessary to ask him to join that union.

²⁶Although the complaint alleges the date of Schwartz' discharge as on or about March 29, 1949, it was stipulated at the hearing that it took place on March 30.

ployees of the store in a group including Schwartz were told by Store Manager Sells that all of the employees in the store who did not belong to the Amalgamated would have to join that Union in order to retain their jobs. After the group disbanded, Schwartz asked Sells whether it was true that he would be required to join the Union, and was told that it "was definite and you will have to join." The following conversation ensued:

Schwartz: Supposing I refuse to join?

Sells: In that case you will be fired.

Schwartz: Do I take it that I am fired?

Sells: You are fired right as of this moment, and what's more, I don't like your attitude.²⁷

On the basis of the undisputed evidence above summarized, I conclude and find that Schwartz was discharged by the Respondent Federal on or about March 30, 1949, because he refused to accede to the Respondent Federal's demand that he join the Amalgamated.²⁸

²⁷The above findings are based on Schwartz' un-denied credited testimony.

²⁸The record contains no support for the allegations in the Respondent Federal's answer that Schwartz was discharged because he had, shortly prior thereto, asked to be transferred to another location because of the limited earning opportunity afforded by his job, and that thereafter Schwartz "showed his dissatisfaction by acts of gross insubordination which led to his discharge." Schwartz' refusal to join the Amalgamated can hardly be deemed to have constituted insubordination, since the Act protects such a refusal under the circumstances herein found.

3. Marie Margaret Faruzzi.

Faruzzi was employed by the Respondent Federal in its above-mentioned store as a cashier, from about June, 1948, to about April 27, 1949, on which date she was either discharged, or voluntarily quit her employment in a dispute over a requested wage increase which was refused her. That termination of her employment is not here in issue.²⁹

On an unspecified day in March, 1949, preceding the final termination of her employment by the Respondent Federal, there was some discussion among employees in the store with respect to the requirement that they join and pay dues to the Amalgamated.³⁰ During that day, Faruzzi was asked several times by Store Manager Sells to "pay the union dues," and Faruzzi consistently refused to do so. At the end of the day, Sells asked her "for the last time whether [she] was going to pay," and she again refused. Thereupon she was informed that she was discharged, and she left the

²⁹As has been set forth in a preliminary section of this Intermediate Report, paragraph 10 of the complaint, which alleges that Faruzzi was illegally discharged "on or about April 27, 1949," was amended at the hearing so as to allege that she was so discharged "some time in March, 1949."

³⁰Faruzzi's testimony with respect to the above was vague, but in the context of the record as a whole, it seems clear that the discussion which she described as "a lot of difference about this union business," refers to the attempts of the Respondent Federal during this period to get the employees of the store to join the Amalgamated.

store. After the store had closed, Faruzzi telephoned to Sells, informed him that since she "needed the job bad enough," she would agree to "pay the dues." Sells told her she could report to work the next morning. She did so, and continued in the employ of the Respondent Federal until her final termination in April. From the time of her reinstatement until she left her job, Amalgamated dues were deducted from her pay.³¹

The evidence above summarized reveals, and I find, that Faruzzi was actually discharged at the end of the day on which the aforesaid events occurred, because of her refusal to pay Amalgamated dues; that she was reinstated only upon her agreement to pay such dues, and that thereafter, to the end of her employment, the union dues were deducted from her pay by the Respondent Federal.

The legal issues raised by the aforesaid facts are whether her discharge, short of duration though it was, constituted an unfair labor practice, and whether the subsequent check-off of Amalgamated dues from her wages was in violation of the Act. These issues are disposed of in the concluding findings which follow.

C. Concluding findings with respect to the discharges of Silverman, Schwartz, and Faruzzi.

Since the union-security clause in the Respondents' contract with the Amalgamated has been

³¹The above findings of fact are based on Faruzzi's undenied, credited testimony.

found to be illegal, the discharges of Silverman and Schwartz pursuant to that clause in the contract plainly constituted such discrimination with regard to their tenure of employment, to encourage membership in a labor organization (the Amalgamated), as is prohibited by Section 8 (a) (3) of the Act. The aforesaid discharges necessarily interfered with, restrained, and coerced the employees of the Respondent Federal in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) thereof, and by illegally encouraging membership in the Amalgamated, constituted support and assistance to that Union by the Respondent Federal, in violation of Section 8 (a) (2) of the Act. I so find.

Faruzzi's discharge stands on a slightly different footing. That discharge was effected because she initially refused to yield to her Employer's demand that she pay dues to the Amalgamated. Since there was no valid contract in existence, requiring membership in good standing in the Amalgamated as a condition of employment by the Respondent, the employees had a legal right, if they wished, to refuse to pay dues to that organization. Since Faruzzi was discharged for exercising that right, the Respondent Federal thereby clearly interfered with, restrained, and coerced its employees in the exercise of their right, as guaranteed in Section 7 of the Act, to refrain from assisting a labor organization, in violation of Section 8 (a) (1) of the Act. Conversely, the Respondent's aforesaid conduct constituted illegal support and assistance to the

Amalgamated, in violation of Section 8 (a) (2) of the Act. I so find.³²

In his brief, counsel for the Respondent Federal points to the fact that paragraph 10 of the complaint alleges that Silverman, Schwartz and Faruzzi were discharged "for the reason that they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection and because they refused to permit the employer to deduct union dues from their compensation." Counsel argues in effect that the aforesaid paragraph of the complaint should be dismissed because the proof fails to support the allegation that these employees were discharged for engaging in concerted activities. It is true that there is a variance between the complaint and the proof insofar as the former alleges that the three employees in question were discharged because they had engaged in concerted activities. However, I do not believe that this variance is fatal, since the issues with respect to the discharges were made clear at the hearing during the course of presentation of the General Counsel's case, the Respondent

³²Paragraphs 15 and 19 of the complaint allege that the discharges of Silverman, Schwartz, and Faruzzi constitute unfair labor practices within the meaning of Section 8(a) (1), (2), and (3) of the Act. Since the record does not show whether or not Faruzzi was, during the period above discussed, a member of the Amalgamated, her discharge cannot be held to have been effected to encourage membership in that Union. I therefore make no finding that her discharge constituted a violation of Section 8(a)(3) of the Act.

did not plead surprise, or request additional time in which to prepare a defense, and the aforesaid issues were fully litigated.

D. Concluding findings with respect to the collection of Amalgamated dues from Faruzzi following her reinstatement.

As we have seen, Faruzzi's payment of dues to the Amalgamated, following her discharge and reinstatement, was far from voluntary. Her submission to the deduction of such dues from her pay was, rather, dictated by the alternatives posed for her by the Respondent Federal, of either yielding to the check-off or being deprived of her job.

I am persuaded that such enforced deduction of union dues from the wages of an employee, when there is no legal obligation on the employee to maintain paid-up membership in the union as a condition of employment, necessarily infringes on the right of the employee, as guaranteed by Section 7 of the Act, to refrain from assisting a labor organization, and therefore constitutes unfair labor practices as defined in Section 8 (a) (1) and (2) of the Act. I see no conflict between this conclusion and the Board's holding in *Salant & Salant, Inc.*, 88 N.L.R.B. No. 156, which is relied on by the Respondents. In that decision the Board stated that the enactment of Section 302 of the Act, which placed certain limitations on the check-off of union dues, did not "have any impact on the unfair labor practice jurisdiction of this Board under Section 8, so as either to create or not create a per se violation

of Section 8 solely on the basis of a violation of those limitations.” The Board concluded that the enactment of Section 302 left undisturbed the application by it of its pre-existing criteria for determining whether the check-off of union dues, under a given set of circumstances, constitutes a violation of the broad proscriptions of Section 8 of the Act. It becomes necessary, then, to determine under what circumstances the Board has customarily held the check-off of union dues to constitute an unfair labor practice. The question usually arises, as it does herein, in connection with allegations that an employer has illegally assisted, contributed support to, or dominated a labor organization. The principle generally applied by the Board in such situations to find that the check-off was an unfair labor practice if, under all the circumstances, the employees from whose wages the union dues were deducted may be said to have been coerced by the employer into joining and paying dues to the union in question. Put another way, the rule seems to be that, “the Board normally orders the reimbursement of checked-off dues only in those cases where the actions of the employer are tantamount to coercing all employees to join the dominated organization.”³³

³³C. Ray Randall Mfg. Co., 85 N.L.R.B. No. 18 (in which the Board adopted the findings, conclusions, and recommendations of the Trial Examiner without, however, specifically passing on his above quoted formulation of the rule). For cases in which the Board has applied such a rule, see: Remington Arms Co., Inc., 62 N.L.R.B. 611, at 614, in which the Board did not order the employees reimbursed

As is indicated by the cases cited, the Board has held that there is nothing inherently violative of the Act in an employer deducting union dues from the pay of employees, even on behalf of a dominated union. The determining factor in deciding whether such conduct constitutes an unfair labor practice is whether the employer coerced the employees into permitting the deduction of dues. In other words, even where the employees are under no legal obligation to pay dues to the union in order

for checked-off dues because, as it pointed out, the circumstances were such that the employees were not coerced into joining and paying dues to the dominated union; Louisville Railway Co., 69 N.L.R.B. 691, at 702, in which the Board similarly refused to order reimbursement for checked-off dues because "membership [in the dominated organization] was not * * * compelled, and dues were checked off only on individual voluntary authorization." (Underlineation supplied.) H. J. Daniels Poultry Co., 65 N.L.R.B. 689, at 690, in which similar result was reached because the employer was not found to have "obligated all employees to join and support" the dominated organization; Pacific Plastic & Mfg. Co., Inc., 68 N.L.R.B. 52, 58, 96, in which reimbursement for checked-off dues was ordered, the employer having "insisted that its employees remain in good standing with [the dominated union] by payment of dues"; Supersweet Feed Co., Inc., 62 N.L.R.B. 53, 60, 84, in which a similar result was reached because the employers "insisted that their employees remain in good standing with [the dominated organization] by payment of dues, and a number of employees were threatened with discharge, pursuant to the closed-shop provisions of the said contracts, for their failure to do so"; Cannon Mfg. Corp., 71 N.L.R.B. 1059, 1092, reimbursement ordered where the dues were checked-off pursuant to an illegal union-security contract with a dominated union.

to retain their jobs, the employer may still deduct such union dues from their pay if the employees voluntarily permit him to do so, but if the employer, under such circumstances, coerces them into yielding to the check-off, the check-off then amounts to an invasion of the employees' rights under the Act. With this principle in mind, it becomes readily apparent that it makes no difference in the result whether the union on whose behalf the dues are checked-off has been held to be an employer-dominated organization or merely an illegally assisted one.³⁴ This the Board has recognized in a decision issued subsequent to that in the *Salant* case. (*Precast Slab and Tile Co.*, 88 N.L.R.B. No. 231, in which the Board ordered checked-off union initiation fees repaid to employees who were required by their employer to allow such deductions from their pay, although the A. F. of L. union involved was not found to have been employer-dominated.)

On the basis of the foregoing, I conclude and find that the Respondent Federal, by coercing Faruzzi into permitting it to deduct Amalgamated dues from her pay on and after the date of her reinstatement, and by deducting such dues from her pay under those circumstances, interfered with, restrained, and coerced her, as well as the rest of its employees, in the exercise of their right, which is guaranteed by Section 7 of the Act, to refrain from assisting a labor organization, thereby com-

³⁴As to the distinction between an illegally assisted union and a company-dominated one, compare *Carpenter Steel Company*, 76 N.L.R.B. 670, and *Hershey Metal Products Company*, 76 N.L.R.B. 695.

mitting unfair labor practices in violation of Section 8 (a) (1) of the Act, and in addition, thereby assisting and supporting the Amalgamated in violation of Section 8 (a) (2) of the Act.

E. The admitted check-off of Amalgamated dues by the Respondent Federal and the Respondent Lee's, from the pay of their employees generally.

As previously noted, both the Respondent Federal and the Respondent Lee's admit that at all times herein material they have checked off Amalgamated dues from the pay of some, though not all, of their respective employees, the employees in question (other than Faruzzi) not being specifically identified in the record. They also admit that such check-offs were effected without the written authorization of the employees involved. The question remains to be decided whether this general practice of making such dues deductions constituted an unfair labor practice. This issue necessitates further examination into the effect of the Board's decision in the Salant case. There the Board held that although the employer had violated Section 8 (a) (1) and (2) of the Act by entering into and keeping in effect an illegal union-shop contract with a union, it had not committed unfair labor practices by virtue of the provision in such contract for the check-off of union dues.³⁵ Aside from the circum-

³⁵In the case at bar the contract between the parties contains no provision for the check-off of union dues.

stances that the Respondent Federal has been found to have discharged two employees because of their refusal to join the Amalgamated, and one because of her refusal to pay dues to that organization, and has been found to have told other employees that membership in the Amalgamated was a condition of their employment, the facts in this case and in the Salant case are essentially identical.³⁶ It might seem, then, as the Respondents argue, that the holding in the Salant case requires the dismissal of the allegation that the Respondents herein violated the Act by checking off dues on behalf of the Amal-

³⁶Here, as in the Salant case, the illegal union-security contract replaced a preceding such contract which was legal because entered into prior to the enactment of the Taft-Hartley amendments to the Act, and these contracts were entered into with a union which, so far as appears, represented an uncoerced majority of the employers' employees. The record shows that the Respondents herein were parties to collective bargaining contracts with the Amalgamated at least from January 31, 1947, until December 17, 1948, on which date a new contract was entered into to remain in effect to January 31, 1950. Although it appears that the Respondents did not, at the time the latter contract was executed, demand or receive from the Amalgamated any proof of the latter's majority status as collective bargaining representative of the employees, and that the Amalgamated has never been certified by the Board as collective bargaining representative of the Respondents' employees, there is no affirmative showing in the record, nor indeed any allegation in the complaint or contention put forward by the General Counsel, that the contract in question was entered into by the Respondents with a union which did not represent an uncoerced majority of the Respondent's employees.

gamated. However, in the light of the cases heretofore cited, in which the Board applied the test of whether or not the dues deductions were voluntarily permitted by the employees, the Salant decision, it seems to me, must be read as resting on the assumption that, since the contracting union in that case represented an uncoerced majority of the employees, and since there was no proof that the employer had, aside from keeping in effect an illegal union-shop contract, coerced the employees into permitting the check-off of union dues, the employees had voluntarily acceded to the check-off. That assumption cannot be made here, at least with respect to the Respondent Federal, for that Employer, by discharging and threatening to discharge employees unless they joined and paid dues to the Amalgamated, created a situation by which its employees were necessarily forced to permit Amalgamated dues to be deducted from their pay, under fear of the loss of their jobs. I therefore conclude and find that the Respondent Federal has at all times since December 17, 1948, coerced some of its employees into permitting it to deduct Amalgamated dues from their pay, and has thereby, and by making such deductions, interfered with, restrained, and coerced its employees in the exercise of their rights under Section 7 of the Act, in violation of Section 8 (a) (1) thereof, and has thereby given support and assistance to the Amalgamated, in violation of Section 8 (a) (2) of the Act.

Since no such specific acts of coercion were proved to have been committed by the Respondent

Lee's against its employees, the check-off of Amalgamated dues as practiced by it falls in the same category as that held not to constitute an unfair labor practice in the Salant case, and I shall therefore recommend that the complaint be dismissed insofar as it alleges that the Respondent Lee's violated the Act by deducting union dues from the pay of its employees.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent Federal and the Respondent Lee's set forth in Section III above, occurring in connection with the operations of these Respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Since it has been found that the Respondents have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

I have found that by entering into and thereafter enforcing an agreement with the Amalgamated containing certain illegal provisions, the Respondent Federal has committed unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) of the Act, and that by enforcing the illegal provisions

of its contract with the Amalgamated, the Respondent Lee's has committed similar unfair labor practices. I shall therefore recommend that they cease and desist from those unfair labor practices or any like or related conduct.³⁷ As the Board has held, the effect of such coercive conduct would not be eradicated were the Respondents permitted to afford the Amalgamated the privilege of enjoying a representative status strengthened by virtue of the illegal union-shop contract. Therefore, in order to effectuate the purposes and policies of the Act, I shall recommend that the Respondents withdraw recognition from the Amalgamated and cease giving effect to the contract which was executed on December 17, 1948, with that organization, or to any modification, extension, supplement, or renewal thereof, unless and until the Amalgamated has been certified by the Board.³⁸ Nothing in this rec-

³⁷Since the Respondents engaged in the conduct herein found to be illegal pursuant to their contract with the Amalgamated, and on the mistaken assumption that they were not engaged in commerce within the meaning of the Act, I am not persuaded that their conduct bespeaks a general attitude of disregard for the rights of their employees, or that it indicates any likelihood of the commission of other unfair labor practices by these Respondents in the future. I do not, therefore, deem it necessary to recommend that they be ordered to cease and desist from in any manner infringing on the rights of their employees. *May Department Stores v. N.L.R.B.*, 326 U.S. 376.

³⁸In his brief counsel for the Respondent Lee's argues that since only the union-shop provision in the contract has been found illegal, the appropriate

ommendation, however, shall be deemed to require the Respondents to vary or abandon those wages, hours, seniority, or other substantive features of their relations with their employees established in performance of such contract, or to prejudice the assertion by the employees of any rights they may have under such agreement.

I have also found that the Respondent Federal committed unfair labor practices by deducting Amalgamated dues from the wages of some of its employees on and after December 17, 1948. The money which the Respondent Federal thus forced those employees to pay to the Amalgamated to fulfill the Respondent's illegal condition of employment was a definite financial loss on the part of the aforesaid employees. I will accordingly recommend that the employees of the Respondent Federal from whose pay Amalgamated dues were deducted on and after December 17, 1948, be made whole by reimbursement of the amounts thus illegally extracted from them.

I have found that the Respondent Federal illegally terminated the employment of employee Faruzzi during the month of March, 1949. Since her discharge was effected at the close of the day, and she was reinstated to her employment at the beginning of the next day, it is not necessary to

remedy is merely to require the parties to cease giving effect to that provision. However, the Board in *Julius Resnick, Inc.*, and in the *Salant* case, *supra*, found the remedy above recommended to be appropriate.

recommend the remedy of reinstatement or back pay in her case.³⁹ It has also been found that the Respondent Federal's discharge of Silverman and Schwartz constituted unfair labor practices under the Act. The record shows that about a week following his discharge Schwartz was offered an equivalent or more desirable position by the Respondent which he refused.⁴⁰ It will therefore not be recommended that the Respondent Federal again offer him reinstatement. It will, however, be recommended that the Respondent Federal make Schwartz whole for any loss of pay he may have suffered by reason of its discrimination against him, by payment of a sum of money equal to the amount he would have earned as wages from the date of his discharge to the date of the aforesaid Respondent's offer of reinstatement which he refused, less his net earnings during the said

³⁹It is understood, of course, that the recommendation that the Respondent Federal reimburse its employees for Amalgamated dues deducted from their pay, applies to Faruzzi.

⁴⁰Although at one point in his testimony Schwartz indicated that he was not definitely offered the aforesaid position, the record as a whole convinces me that a definite offer of the position was made to him. At a subsequent point in his testimony Schwartz testified that in a conversation with a representative of the Respondent he told that representative that he "couldn't take the job [the Respondent] had offered," because he planned to enter into a business of his own.

period.⁴¹ As to Silverman, the record reveals that on or about March 7, 1950, he entered into an agreement with counsel for the Respondent Federal in compromise of his claim against that Respondent arising out of his discharge. At the hearing Silverman testified that he was not asking for any back pay, nor for an offer of reinstatement in the employ of the Respondent Federal. Since the Act establishes a public policy and is enforced in order to effectuate that policy, and not to satisfy any private claims which might arise from violations of the Act, it follows that private agreements in settlement of such personal claims are not effective to bar the Board from ordering whatever remedy is appropriate to effectuate the public policies of the Act. Consequently, Silverman was asked at the hearing whether his testimony that he was not seeking re-employment by the Respondent Federal was based solely on the private agreement which he made with that Respondent, and he answered that he did not desire reinstatement in any event. In view of that statement, it will not be recommended that the Respondent Federal offer reinstatement to Silverman. It will be recommended, however, that Silverman be made whole for any loss of pay he may have suffered by reason of the Respondent Federal's discrimination against him, by payment to him of a sum of money equal to the amount he would have earned as wages from the date of his discharge to the date (March 7, 1950) when he testified that he

⁴¹See *Crossett Lumber Company*, 8 N.L.R.B. 440, 497-498.

did not desire reinstatement, less his net earnings during the said period.⁴²

It will also be recommended that the Respondents post appropriate notices to their employees in connection with the foregoing.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. Retail Clerks International Association, A. F. of L., and Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., are labor organizations within the meaning of Section 2 (5) of the Act.

2. Federal Stores Division of Speigel, Inc., and Leo Katz, Minda Katz, Otto Katz, Leomond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias, and Walter L. Keen, doing business as Lee's Department Store, are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. By entering into its contract with the Amalgamated on December 17, 1948, and thereafter enforcing its illegal provisions, the Respondent Federal committed unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) of the Act.

⁴²Although I do not regard the private settlement between Silverman and the Respondent Federal as binding, I see no reason why any amount paid to him pursuant to that agreement should not be credited as against any sum found to be due him.

4. By enforcing the illegal provisions of its contract with the Amalgamated at all times since December 22, 1948, the Respondent Lee's committed unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Mandil Silverman and Nathan O. Schwartz to encourage membership in the Amalgamated, the Respondent Federal supported and assisted the Amalgamated, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) of the Act.

6. By its discharge of Marie M. Faruzzi, the Respondent Federal interfered with, restrained, and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act, and assisted and supported the Amalgamated, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (2) of the Act.

7. By coercing its employees into permitting it to deduct dues from their pay on behalf of the Amalgamated, on and after December 17, 1948, the Respondent Federal interfered with, restrained, and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act, and supported and assisted the Amalgamated, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (2) of the Act.

8. By demanding that its employees become and remain members of the Amalgamated, and by threatening them with discharge for their failure to do so, the Respondent Federal assisted and supported the Amalgamated, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (2) of the Act.

9. All of the aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

10. The Respondent Lee's has not engaged in unfair labor practices by deducting Amalgamated dues from the pay of some of its employees.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, I recommend that the Respondent Federal Stores Division of Speigel, Inc., of San Francisco, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Entering into, renewing, or enforcing any agreement with Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., or any other labor organization, which requires its employees to join, or maintain their membership in, such labor organization as a condition of employment, unless

such agreement has been authorized as provided by the National Labor Relations Act, as amended;

(b) Recognizing Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., or any successor thereto, as the representative of any of its employees at its stores in the Los Angeles, California, area, for the purposes of dealing with the said Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(c) Performing or giving effect to its contract of December 17, 1948, with Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., or to any modification, extension, supplement, or renewal thereof or to any other contract, agreement or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(d) Discharging or threatening to discharge any of its employees, or in any other manner discriminating or threatening to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage membership in the Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., or any other labor organization of its employees, except to the extent that such conduct may be required by a valid agree-

ment requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act;

(e) Requiring its employees to pay dues to the Amalgamated, or to any other labor organization of its employees, except to the extent that paid-up membership in a labor organization may be required as a condition of employment by a valid agreement, as authorized in Section 8 (a) (3) of the Act;

(f) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, join or assist Retail Clerks International Association, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., as the representative of any of the employees of the Respondent Federal for the purposes of dealing with the said Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of

employment unless and until said organization shall have been certified by the National Labor Relations Board;

(b) Make whole Mandil Silverman for any loss of pay he may have suffered by reason of the Respondent Federal's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned in the said Respondent's employ from the date of his discharge to the date (March 7, 1950), when he testified that he did not desire reinstatement in the aforesaid Respondent's employ, less his net earnings during such period, and whatever amount the said Respondent may already have paid him on account thereof;

(c) Make whole Nathan O. Schwartz for any loss of pay he may have suffered by reason of the Respondent Federal's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned in the said Respondent's employ from the date of his discharge to the date when the Respondent Federal offered him reinstatement in its employ, less his net earnings during such period;

(d) Make whole each of its employees, including Marie Margaret Faruzzi, from whose pay deductions of Amalgamated dues were made at any time since December 17, 1948, by reimbursing each of said employees for the amounts thus deducted from their pay;

(e) Post at its stores in Los Angeles and Huntington Park, California, copies of the notice at-

tached hereto marked Appendix A. Copies of said notice shall be furnished to the Respondent Federal by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of the said Respondent, be posted by it immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(f) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of this Intermediate Report what steps it has taken to comply therewith.

It is also recommended that the Respondents Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias, and Walter L. Keen, doing business as Lee's Department Store, Huntington Park, California, and their agents, successors, and assigns, shall;

1. Cease and desist from:

(a) Renewing or enforcing any agreement with Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., or any other labor organization which requires their employees to join, or maintain their membership in, such labor organization as a condition of employment, unless such agreement

has been authorized as provided by the National Labor Relations Act, as amended;

(b) Recognizing Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., or any successor thereto as the representative of any of their employees at their store in Huntington Park, California, for the purposes of dealing with the said Respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(c) Performing or giving effect to their contract of December 17, 1948, with Amalgamated Clothing Workers of America, Local No. 81, C.I.O., or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(d) In any like or related manner interfering with, restraining or coercing their employees in the exercise of their right to self-organization, to form labor organizations, join or assist Retail Clerks International Association, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to

refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local Union No. 81, C.I.O., as the representative of any of their employees, for the purposes of dealing with the said Respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(b) Post at their store in Huntington Park, California, copies of the notice attached hereto marked Appendix B. Copies of said notice shall be furnished to the said Respondents by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of the said Respondents, be posted by them immediately upon receipt thereof and maintained by them for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted, Reasonable steps shall be taken by the said Respondents to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the

Twenty-first Region in writing within twenty (20) days from the date of this Intermediate Report what steps they have taken to comply therewith.

It is also recommended that the complaint be dismissed insofar as it alleges that the aforesaid Respondents herein referred to collectively as the Respondent Lee's committed unfair labor practices by checking off Amalgamated dues from the pay of their employees.

It is further recommended that unless each of the Respondents herein referred to as the Respondent Federal and the Respondent Lee's, shall within twenty (20) days from the receipt of this Intermediate Report notify the aforesaid Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondents to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an origi-

nal and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 12th day of May, 1950.

/s/ ISADORE GREENBERG,
Trial Examiner.

Appendix A

Notice to All Employees

Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not enter into, renew, or enforce any agreement with the Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization, which requires our employees to join, or maintain their membership in, such labor organization as a condition of employment, unless such agreement has been authorized as provided by the National Labor Relations Act, as amended.

We Will withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local Union No. 81, CIO, as the representative of any of our employees at our Los Angeles and Huntington Park, California, stores, for the purposes of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Amalgamated Clothing Workers of America, Local Union No. 81, CIO, shall have been certified by the National Labor Relations Board as the bargaining representative of our said employees.

We Will cease performing or giving effect to our contract of December 17, 1948, with

Amalgamated Clothing Workers of America, Local Union No. 81, CIO, covering employees at our Los Angeles and Huntington Park, California, stores, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until such organization shall have been certified by the National Labor Relations Board.

We Will Not discharge or threaten to discharge any of our employees, or in any other manner discriminate or threaten to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage membership in the Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization, except to the extent that such conduct may be required by a valid agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act, as amended.

We Will Not require our employees to pay dues to Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or to any other labor organization, except to the extent that paid-up membership in a labor organization may be required as a condition of employment by a valid agreement, as authorized in

Section 8 (a) (3) of the National Labor Relations Act, as amended.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Retail Clerks International Association, A. F. of L, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act, as amended.

We Will reimburse each of our employees, including Marie Margaret Faruzzi, from whose pay deductions were made since December 17, 1948, for dues paid to Amalgamated Clothing Workers of America, Local Union No. 81, CIO.

We Will make Nathan O. Schwartz, and Mandil Silverman whole for any loss of pay suffered as a result of discrimination.

FEDERAL STORE DIVISION
OF SPEIGEL, INC.,
(Employer)

Dated:.....

By.....,
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B

Notice to All Employees

Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not renew or enforce any agreement with the Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization, which requires our employees to join, or maintain their membership in, such labor organization as a condition of employment, unless such agreement has been authorized as provided by the National Labor Relations Act, as amended.

We Will withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local Union No. 81, CIO, as the representative of any of our employees at our Huntington Park, California, store, for the purposes of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Amalgamated Clothing Workers of America, Local Union No. 81, CIO,

shall have been certified by the National Labor Relations Board as the bargaining representative of our said employees.

We Will cease performing or giving effect to our contract of December 17, 1948, with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, covering employees at our Huntington Park, California, store, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until such organization shall have been certified by the National Labor Relations Board.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Retail Clerks International Association, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as au-

thorized in Section 8 (a) (3) of the National Labor Relations Act, as amended.

LEO KATZ, MINDA KATZ, OTTO KATZ, LEE-MOND KATZ, PHIL KATES, DOROTHY KATES, ELY ELIAS, BERTHA ELIAS, JULIAN ELIAS, and WALTER L. KEEN,
Doing Business as LEE'S DEPARTMENT
STORE

(Employer)

Dated:.....

By.....,

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

File in Formal File.

United States of America

Before the National Labor Relations Board

[Title of Causes.]

ORDER TRANSFERRING CASES TO THE NATIONAL LABOR RELATIONS BOARD

A hearing in the above-entitled cases having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

It Is Hereby Ordered, pursuant to Section 203.45 of National Labor Relations Board Rules and Regulations, Series 5, that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., this 12th day of May, 1950.

By direction of the Board:

/s/ FRANK M. KLEILER,
Executive Secretary.

Note: Communications concerning compliance with the Intermediate Report should be with the Director of the Regional Office issuing the complaint. Your attention is specifically directed to the concluding paragraph of the Intermediate Report in respect to your right to file exceptions, briefs, and to request oral argument. Please note that exceptions and brief must be filed as separate documents.

File in Formal File.

United States of America
Before the National Labor Relations Board,
Washington, D. C.

[Title of Causes.]

EXCEPTIONS OF RESPONDENT LEE'S
DEPARTMENT STORE TO THE PRO-
CEEDINGS AND THE INTERMEDIATE
REPORT

Lee's Department Store, a respondent in the above-entitled proceedings, pursuant to Section 203.46 of the Rules and Regulations of the National Labor Relations Board, submits herewith its Exceptions to the Intermediate Report and recommended order and to the record and proceedings. In these exceptions we will follow the headings and arrangement of the Intermediate Report, and refer to the paging therein. Accordingly, Respondent excepts to the following:

Statement of the Case

(1) Page 2, lines 52-57. The Trial Examiner erred at the hearing in denying this respondent's motions to sever the cases, to dismiss the complaint, and to strike various portions of the complaint (Tr. pp. 13-30, 139-144, 296-297).

(2) Page 3, lines 33-34. The Trial Examiner erred in his intermediate Report in denying this respondent's motion to strike paragraph 9 and all evidence in support thereof (Tr. pp. 22-26, 139-144, 295).

(3) Page 5, lines 37-40. The Trial Examiner erred in his Intermediate Report in denying this respondent's motion to strike paragraphs 7, 8, 9, 12 and 14 and the reference in paragraph 19 to Section 8 (a) (2) of the Act (Tr. pp. 26, 27-30, 296-297).

Findings of Fact

I. The Business of the Respondents

(4) Page 8, lines 10-14. This finding, on the record, is contrary to the decisions and policies of the Board.

(5) Page 8, lines 16-21. This finding is without any support in the evidence. The General Counsel made no claim that a multi-employer bargaining unit was in effect, and the contract (G. C. Exh. 4) establishes single employer bargaining units.

(6) Page 8, lines 21-40. These findings are incomplete in failing to include the uncontradicted testimony establishing that the Credit Stores Association had ceased to exist (formally and informally) in 1941 and did not function in any way thereafter (Tr. pp. 38-40, 42-46, 143, 144, 171-172, 177-178).

(7) Page 8, lines 41, 45. This finding is inaccurate and incomplete. This respondent contends that the Association was not in existence in any sense when the contract was entered into, and Guyon was in fact acting on behalf of each of the stores individually (Tr. pp. 60-61, 176, 180).

(8) Page 9, lines 6-7 and 15-16. There was no evidence of a multi-employer bargaining unit.

III. The Unfair Labor Practices

A. The Execution and Enforcement of the Contract Containing a Union-Security Clause

(9) Page 10, lines 15-18, 28-37. This finding and conclusion is contrary to law, is improper in view of the proviso to Section 10(b) of the Act, is contrary to the evidence inasmuch as the allegedly illegal provision was in effect prior to the Taft-Hartley Act (G. C. Exhs. 3 and 4), and is not supported by any charge.

(10) Page 11, line 3. This finding is contrary to law.

(11) Page 11, lines 9-10, 29-35. See Exception (9).

IV. The Effect of the Unfair Labor Practices Upon Commerce

(12) Page 18, lines 25-29. This finding is without support in the evidence and is contrary to law.

V. The Remedy

(13) Page 18, line 49; page 19, line 4. This recommendation is improper and contrary to law.

Conclusion of Law

(14) Page 20, lines 30-34. This conclusion is contrary to law and without support in the record.

(15) Page 20, lines 41-44. This conclusion is contrary to law and without support in the record.

Recommendations

(16) Page 23, line 18; page 24, line 20. These recommendations in their entirety are contrary to law and without support in the record. Furthermore, assuming a violation in the respects found, the only appropriate order would be paragraph 1(a) and the posting of a notice containing the substance of that paragraph.

Wherefore, Respondent Lee's urges the National Labor Relations Board to accept and adopt each of the Exceptions herein and act accordingly by dismissing this proceeding.

Dated: June 15, 1950.

Respectfully submitted.

LATHAM & WATKINS,

THEODORE J. ELIAS,

HAROLD EASTON,

By R. W. LUND,

Attorneys for Respondent
Lee's Department Store.

United States of America
Before the National Labor Relations Board

[Title of Causes.]

DECISION AND ORDER

On May 12, 1950, Trial Examiner Isadore Greenberg issued his Intermediate Report in the above-entitled proceeding, finding that Respondent Federal and Respondent Lee's had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that Respondent Lee's had not engaged in certain other unfair labor practices, and recommended dismissal as to them. Thereafter, both Respondents filed exceptions to the Intermediate Report and briefs in support thereof.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with this Decision and Order.

¹After the issuance of the Intermediate Report, the Board received two stipulations entered into by all the parties and providing for certain corrections in the transcript of testimony. The stipulations are hereby approved and made a part of the record.

1. We agree with the Trial Examiner's finding that the Board has jurisdiction over both Respondents because of their participation in an association-wide bargaining group of employers, whose total volume of operations substantially affect commerce within the meaning of the Act.²

The record shows that both Respondents and four other department store employers doing business in southern California were members of Credit Stores Association, herein called the Association, whose representative negotiated a contract with the Amalgamated on December 17, 1948, the terms of which apply to all employees of the six employers. The annual total purchases of these employers are in excess of \$3,000,000, of which amount in excess of \$750,000 is received directly from points outside the State of California.³ In view of the foregoing, and our recent decision in the Federal Dairy case,⁴ we find that it will effectuate the policies of the Act to assert jurisdiction over Respondents Federal and Lee's.

2. The Trial Examiner found, and we agree, that

²Carpenter & Skaer, Inc., et al., 89 N.L.R.B. No. 167, and cases cited therein.

³These figures include the volume of purchases made by Respondent Federal for its three stores in southern California, all of which are covered by the above contract.

⁴Federal Dairy Co., Inc., 91 N.L.R.B. No. 107, wherein the Board adopted a minimum direct inflow requirement of \$500,000 as a determinative factor in asserting jurisdiction.

both Respondents violated Section 8 (a) (1), (2), and (3) of the Act for the reasons that (1) Federal executed and enforced the contract of December 17, 1948, by unlawfully requiring membership in the Amalgamated as a condition of employment, and (2) that Lee's unlawfully enforced the illegal union-seniority provision.

3. We agree with the Trial Examiner that Respondent Federal also violated Section 8 (a) (1), (2), and (3) of the Act by discharging employees Silverman and Schwartz because they refused to join the Amalgamated. We also agree with the Trial Examiner's finding that Respondent Federal violated Section 8 (a) (1) and (2) by discharging employee Faruzzi because she refused to permit Federal to deduct dues from her pay in favor of the Amalgamated. As no exceptions were filed, we do not pass upon the Trial Examiner's reasons for refusing to find that Faruzzi's discharge was also a violation of Section 8 (a) (3).⁵

4. The Trial Examiner found, and we agree, that Respondent Federal violated Section 8 (a) (1) and (2) of the Act by coercing some of its employees into permitting it to deduct Amalgamated dues from their pay. Respondent Federal contends that the Board's holding in the Salant case⁶ requires the dismissal of this portion of the complaint. In that case, the Board held that there was no violation of

⁵See Intermediate Report, footnote 32.

⁶Salant & Salant, Inc., 88 N.L.R.B. No. 156.

the Act where a check-off agreement inured to the benefit of a union that represented an uncoerced majority of the employer's employees. While it is true that the Amalgamated occupied a similar status, the instant proceeding may be otherwise distinguished from the Salant case. Here the employees did not furnish Federal with Voluntary written authorizations for the check-off. Furthermore, as evidenced by the discriminatory discharge of Faruzzi and the fact that the employees were told by Federal that they could not continue working unless they joined the Amalgamated and paid dues, it is clear that Respondent Federal coerced its employees to accept the check-off. We have heretofore held that an employer's coercion in deducting dues from its employees is violative of the Act, and as recommended by the Trial Examiner, such employees are entitled to reimbursement for all monies so deducted.⁷

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

⁷Precast Slab and Tile Co., 88 N.L.R.B. No. 231. As the Amalgamated is not a respondent in this proceeding, we are unable to accept Respondent Federal's contention that the Amalgamated should also be held responsible for the reimbursement of dues or any back pay to which some of the employees are entitled. Cf. H. M. Newman, et al., 85 N.L.R.B. 727.

1. Respondent Federal Stores Division of Spiegel, Inc., of San Francisco, California, and its officers, agents, successors, and assigns, shall:

A. Cease and desist from:

(1) Entering into, renewing, or enforcing any agreement with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization, which requires its employees to join, or maintain their membership in, such labor organization as a condition of employment, unless such agreement has been authorized as provided by the National Labor Relations Act, as amended;

(2) Recognizing Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any successor thereto, as the representative of any of its employees at its stores in the Los Angeles, California, area, for the purposes of dealing with the said Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(3) Performing or giving effect to its contract of December 17, 1948, with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or to any modification, extension, supplement, or renewal thereof or to any other contract, agreement, or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other condi-

tions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(4) Discharging or threatening to discharge any of its employees, or in any other manner discriminating or threatening to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage membership in the Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization of its employees, except to the extent that such conduct may be required by a valid agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act;

(5) Requiring its employees to pay dues to the Amalgamated, or to any other labor organization of its employees, except to the extent that paid-up membership in a labor organization may be required as a condition of employment by a valid agreement, as authorized in Section 8 (a) (3) of the Act;

(6) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, join or assist Retail Clerks International Association, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except

to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

B. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local Union No. 81, CIO, as the representative of any of the employees of the Respondent Federal for the purposes of dealing with the said Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(2) Make whole Mandil Silverman for any loss of pay he may have suffered by reason of the Respondent Federal's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned in the said Respondent's employ from the date of his discharge to the date (March 7, 1950), when he testified that he did not desire reinstatement in the aforesaid Respondent's employ, less his net earnings during such period, and whatever amount the said Respondent may already have paid him on account thereof;

(3) Make whole Nathan O. Schwartz for any loss of pay he may have suffered by reason of the

Respondent Federal's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned in the said Respondent's employ from the date of his discharge to the date when the Respondent Federal offered him reinstatement in its employ, less his net earnings during such period;

(4) Make whole each of its employees, including Marie Margaret Faruzzi, from whose pay deductions of Amalgamated dues were made at any time since December 17, 1948, by reimbursing each of said employees for the amounts thus deducted from their pays;

(5) Post at its stores in Los Angeles and Huntington Park, California, copies of the notice attached to the Intermediate Report marked Appendix A.⁸ Copies of said notice shall be furnished to the Respondent Federal by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of the said Respondent, be posted by it immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places,

⁸Said notice, however, shall be, and it hereby is, amended by striking from line 3 thereof the words "The recommendations of a Trial Examiner" and substituting in lieu thereof the words "Decision and Order." In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "Decision and Order" the words "Decree of the United States Court of Appeals Enforcing."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(6) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps it has taken to comply herewith.

2. Respondents Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias, and Walter L. Keen, doing business as Lee's Department Store, Huntington Park, California, and their agents, successors, and assigns, shall:

A. Cease and desist from:

(1) Renewing or enforcing any agreement with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization, which requires their employees to join, or maintain their membership in, such labor organization as a condition of employment, unless such agreement has been authorized as provided by the National Labor Relations Act, as amended;

(2) Recognizing Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any successor thereto as the representative of any of their employees at their store in Huntington Park, California, for the purposes of dealing with the said Respondents concerning grievances, labor disputes,

wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(3) Performing or giving effect to their contract of December 17, 1948, with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(4) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, join or assist Retail Clerks International Association, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

B. Take the following affirmative action which

the Board finds will effectuate the policies of the Act:

(1) Withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local Union No. 81, CIO, as the representative of any of their employees, for the purposes of dealing with the said Respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(2) Post at their store in Huntington Park, California, copies of the notice attached to the Intermediate Report marked Appendix B.⁹ Copies of said notice shall be furnished to the said Respondents by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of the said Respondents, be posted by them immediately upon receipt thereof and maintained by them for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Respondents to insure that said notices are not

⁹This notice, however, shall be and it hereby is, amended by striking from line 3 thereof the words "The recommendations of a Trial Examiner" and substituting in lieu thereof the words "Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted, before the words "Decision and Order," the words "Decree of the United States Court of Appeals Enforcing."

altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps they have taken to comply herewith.

It is further ordered that the complaint be dismissed insofar as it alleges that the aforesaid Respondents herein referred to collectively as the Respondent Lee's, committed unfair labor practices by checking off Amalgamated dues from the pay of their employees.

Signed at Washington, D. C., this 4th day of Oct., 1950.

PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

PAUL L. STYLES,
Member.

[Seal]: NATIONAL LABOR
RELATIONS BOARD.

File in Informal File.

United States Court of Appeals
for the Ninth Circuit

No. 12827

In the Matter of

LEO KATZ, MINDA KATZ, OTTO KATZ, LEE-
MOND KATZ, PHIL KATES, DOROTHY
KATES, ELY ELIAS, BERTHA ELIAS,
JULIAN ELIAS and WALTER L. KEEN,
d/b/a LEE'S DEPARTMENT STORE,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW OF ORDER OF
NATIONAL LABOR RELATIONS BOARD

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, d/b/a Lee's Department Store, a co-partnership, petition this Honorable Court for a review of a certain Order entered on October 4, 1950, by the National Labor Relations Board (hereinafter referred to as the "Board") in a proceeding instituted by it against these Petitioners and against Federal Stores Division of Speigel, Inc., which proceeding is designated upon the records of the Board as "In the Matter of Federal Stores Division of Speigel, Inc.,

and Retail Clerks International Association, A. F. of L., and Amalgamated Clothing Workers of America, Local Union No. 81, CIO, Party to the Contract, Case No. 21-CA-420''; and ''In the Matter of Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, d/b/a Lee's Department Store, and Retail Clerks International Association, A. F. of L., and Amalgamated Clothing Workers of America, Local Union No. 81, CIO, Party to the Contract, Case No. 21-CA-481.''

In support of their petition your Petitioners respectfully allege and show:

(1) Petitioners are, and at all times herein mentioned were, a co-partnership doing business as Lee's Department Store. Petitioners maintain, and at all times herein mentioned have maintained, their principal place of business, and transact, and at all times herein mentioned have transacted, their principal business in the City of Huntington Park, County of Los Angeles, State of California, within this circuit.

(2) In the consolidated complaint issued by the Board in the above-mentioned proceeding, it was alleged that your Petitioners engage in certain unfair labor practices in the City of Huntington Park, County of Los Angeles, State of California, within this circuit.

(3) In the complaint issued by the Board it was alleged that Petitioners are engaged in commerce within the meaning of the Labor Management Rela-

tions Act, 1947. The Board found that purchases and shipments by these Petitioners of goods and merchandise across state lines and Petitioners' participation in an association-wide bargaining group of employers brought Petitioners under the jurisdiction of the Board.

(4) By reason of the facts set forth in paragraphs (1) and (3) above, this Court has jurisdiction to hear this petition pursuant to Section 10(f) of the Labor Management Relations Act, 1947.

(5) As will be more fully shown by the entire record of this proceeding to be certified by the Board and filed by Petitioners with this Court herein, the within proceedings before this Board included, without limitation, a consolidated complaint filed against your Petitioners (Case No. 21-CA-421) and Federal Stores Division of Spiegel, Inc., (Case No. 21-CA-420), Petitioners' Answer, Petitioners' motion to sever the case involving Petitioners (No. 21-CA-481) from the case involving Federal Stores Division of Spiegel, Inc., (No. 21-CA-420), Petitioners' motions to dismiss the complaint in its entirety, Petitioners' motion to strike certain paragraphs of the complaint, Petitioners' motion to strike certain testimony, Petitioners' motion to dismiss the complaint on jurisdictional grounds, Petitioners' motion to file amended answer, Petitioners' amended answer, the Board's order denying Petitioners' several motions, hearing for the purpose of taking testimony and receiving other evidence, intermediate report, order trans-

ferring case to the National Labor Relations Board, Petitioners' exceptions to the intermediate report and briefs supporting said exceptions. Upon the basis of the above, the Board on October 4, 1950, stated its findings of fact, conclusions of law and decision, and issued an order directed inter alia to Petitioners and their agents successors and assigns. A part of said order correctly directed that the complaint be dismissed "insofar as it alleges that the aforesaid Respondents herein referred to collectively, as the Respondents "Lee's" (your Petitioners herein), committed unfair labor practices by checking off Amalgamated dues from the pay of their employees." So much of the remainder of said order as relates to your Petitioners in this proceeding is as follows:

Order

2. Respondents Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias, and Walter L. Keen, doing business as Lee's Department Store, Huntington Park, California, and their agents, successors, and assigns, shall:

A. Cease and desist from:

(1) Renewing or enforcing any agreement with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization, which requires their employees to join, or maintain their membership in, such labor organization as a condition of

employment, unless such agreement has been authorized as provided by the National Labor Relations Act, as amended;

(2) Recognizing Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any successor thereto as the representative of any of their employees at their store in Huntington Park, California, for the purposes of dealing with the said Respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(3) Performing or giving effect to their contract of December 17, 1948, with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(4) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, join or assist Retail Clerks International Association, A. F. of L.,

or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

B. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local No. 81, CIO, as the representative of any of their employees, for the purposes of dealing with the said Respondents governing grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board:

(2) Post at their store in Huntington Park, California, copies of the notice attached to the Intermediate Report marked Appendix B.⁹

⁹This notice, however, shall be and it hereby is, amended by striking from line 3 thereof the words "The recommendations of a Trial Examiner" and substituting in lieu thereof the words "Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there

Copies of said notice shall be furnished to the said Respondents by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of the said Respondents, be posted by them immediately upon receipt thereof and maintained by them for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps they have taken to comply therewith.

(6) Petitioners, and each of them, have been aggrieved by reason of the portion of said Order of the Board set out immediately above because, in respect thereof the Board's findings of fact are not supported by the evidence, its conclusions of law are erroneous and unlawful, and its rulings upon Petitioners' motions are erroneous and illegal.

Wherefore, Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, d/b/a Lee's Department Store, petition this

shall be inserted, before the words "Decision and Order," the words "Decree of the United States Court of Appeals Enforcing."

Honorable Court for a review of the portion of the Order hereinabove set forth, which Order was entered by the Board on October 4, 1950, and respectfully pray:

1. That the Board be directed to certify and deliver to Petitioners a transcript of the entire record in the aforementioned proceedings before the Board;

2. That Petitioners may be granted leave to file such certified record within a reasonable time to be fixed by the Court;

3. That the aforementioned Order (except that portion thereof dismissing the complaint insofar as it alleges that Petitioners committed unfair labor practices by checking off Amalgamated dues from the pay of their employees) be set aside and that Petitioners, their agents, successors, and assigns, be relieved by order of the Court from the necessity of complying therewith; and,

4. For such other and further relief as may be proper.

Respectfully submitted,

/s/ RICHARD W. LUND,

Attorney for Petitioners.

State of California,
County of Los Angeles—ss.

Richard W. Lund, being first duly sworn, on oath, deposes and says: That I am the attorney for Petitioners in this proceeding attached hereto, I have

read the foregoing petition and am familiar with the contents thereof. The allegations of fact contained therein are true to the best of my knowledge, information and belief. This petition is not filed for purposes of delay, and I believe Petitioners are justly entitled to the relief sought.

/s/ RICHARD W. LUND.

Subscribed and sworn to before me this 25th day of January, 1951.

[Seal] /s/ A. R. KIMBROUGH,
Notary Public in and for the State of California,
County of Los Angeles.

[Endorsed]: Filed January 27, 1951.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING OF PETITION FOR
REVIEW OF ORDER OF NATIONAL
LABOR RELATIONS BOARD

To the National Labor Relations Board, Washington, D. C.:

You are hereby notified that the petitioners in the above-entitled proceeding have filed, concurrently herewith, their petition to the United States Court of Appeals for the Ninth Circuit for review of the decision and order of the National Labor Relations Board in a proceeding before the National Labor Relations Board, designated upon the records

of said Board as "In the Matter of Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias, and Walter L. Keen, d/b/a Lee's Department Store and Retail Clerks International Association, A. F. of L., and Amalgamated Clothing Workers of America, Local Union No. 81, CIO, Party to the Contract, Case No. 21-CA-481."

A copy of said petition for review, together with a copy of this notice, is hereby served on you.

Dated January 24, 1951.

/s/ RICHARD W. LUND,
Attorney for Petitioners.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 27, 1951.

[Title of Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO THE PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, AND REQUEST FOR ENFORCEMENT OF SAID ORDER

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat.

136, 29 U.S.C., Supp. III, Secs. 151, et seq.), herein called the Act, files this answer to the petition to review and set aside an order issued by the Board against Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias, and Walter L. Keen, d/b/a Lee's Department Store, Petitioners herein, and the Board's request for enforcement of said order.

1. Answering the allegations in paragraphs (1), (2), (3), (4), and (5) of the Petition to Review, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herewith, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter.

2. Further answering, the Board denies each and every allegation of error contained in paragraph (6) of the Petition to Review, and avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

3. Further answering, the Board, pursuant to Section 10(e) of the Act, respectfully requests this Honorable Court for the enforcement of its order issued against Petitioners on October 4, 1950, in the proceedings designated on the records of the Board as Case No. 21-CA-481, entitled "In the Matter of Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias,

Julian Elias and Walter L. Keen, d/b/a Lee's Department Store."

In suport of this request for enforcement of its order, the Board respectfully shows:

(a) This Court has jurisdiction of the petition herein and of this request for enforcement by virtue of Section 10(e) and (f) of the Act.

(b) Upon all proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herewith, to which reference is hereby made, the Board on October 4, 1950, duly stated its findings of fact and conclusions of law and issued an order directed to Petitioners, their agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Respondents Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias, and Walter L. Keen, doing business as Lee's Department Store, Huntington Park, California, and their agents, successors, and assigns, shall:

A. Cease and desist from:

(1) Renewing or enforcing any agreement with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization, which requires their employees to join, or maintain their membership

in, such labor organization as a condition of employment, unless such agreement has been authorized as provided by the National Labor Relations Act, as amended;

(2) Recognizing Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any successor thereto as the representative of any of their employees at their store in Huntington Park, California, for the purposes of dealing with the said Respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(3) Performing or giving effect to their contract of December 17, 1948, with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(4) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, join or assist Retail

Clerks International Association, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) 3 of the Act.

B. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local Union No. 81, CIO, as the representative of any of their employees, for the purposes of dealing with the said Respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board;

(2) Post at their store in Huntington Park, California, copies of the notice attached to the Intermediate Report marked Appendix B.⁹

⁹This notice, however, shall be and it hereby is, amended by striking from line 3 thereof the words "The recommendations of a Trial Examiner" and substituting in lieu thereof the words "Decision and

Copies of said notice shall be furnished to the said Respondents by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of the said Respondents, be posted by them immediately upon receipt thereof and maintained by them for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps they have taken to comply herewith.

(c) On October 4, 1950, the Board's Decision and Order were duly served on Petitioners.

(d) Pursuant to Section 10(e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified transcript of the entire record in this

Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted, before the words "Decision and Order," the words "Decree of the United States Court of Appeals Enforcing."

proceeding to be served upon Petitioners, and that this Court take jurisdiction of the proceeding and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings, set forth in the entire certified record of said proceedings, and upon so much of the order as set forth hereinabove, a decree denying the petition to review and set aside and enforcing in whole said order of the Board, and requiring Petitioners and their agents, successors, and assigns to comply therewith.

/s/ A. NORMAN SOMERS,

Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 9th day of March, 1951.

Appendix B

Notice to All Employees

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not renew or enforce any agreement with the Amalgamated Clothing Workers of America, Local Union No. 81, CIO, or any other labor organization, which requires our employees to join, or maintain their membership in, such labor organization as a condition of employment, unless such

agreement has been authorized as provided by the National Labor Relations Act, as amended.

We Will withdraw and withhold all recognition from Amalgamated Clothing Workers of America, Local Union No. 81, CIO, as the representative of any of our employees at our Huntington Park, California, store, for the purposes of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Amalgamated Clothing Workers of America, Local Union No. 81, CIO, shall have been certified by the National Labor Relations Board as the bargaining representative of our said employees.

We Will cease performing or giving effect to our contract of December 17, 1948, with Amalgamated Clothing Workers of America, Local Union No. 81, CIO, covering employees at our Huntington Park, California, store, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said organization relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until such organization shall have been certified by the National Labor Relations Board.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Retail Clerks International Association, A. F. of L., or any other labor organization, to bargain collectively through

representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act, as amended.

LEO KATZ, MINDA KATZ, OTTO KATZ, LEE-MOND KATZ, PHIL KATES, DOROTHY KATES, ELY ELIAS, BERTHA ELIAS, JULIAN ELIAS, and WALTER L. KEEN,
Doing Business as

LEE'S DEPARTMENT STORE,
(Employer)

By
(Representative) (Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed March 13, 1951.

United States of America
Before the National Labor Relations Board,
Twenty-First Region

[Title of Causes.]

STIPULATION CORRECTING RECORD

It Is Hereby Stipulated between the parties to the above-entitled proceeding that the transcript in this matter shall be corrected in the following respects:

Page 206, commencing in line 3 in the sentence commencing with the words "I made," correct said sentence so that it shall read as follows:

"Mr. Ladar: I made it crystal clear that Mr. Silverman would not take the settlement and then disappear, and wouldn't claim that he was discharged for this reason or that reason."

Dated: April 28, 1950.

LATHAM & WATKINS,
THEODORE J. ELIAS,
HAROLD EASTON,

By /s/ R. W. LUND,
Attorneys for
Respondent Lee's.

JESSE H. STEINHART,
By /s/ S. A. LADAR,
Attorneys for
Respondent Federal.

GENERAL COUNSEL OF THE NATIONAL
LABOR RELATIONS BOARD,

By/s/ GEORGE H. O'BRIEN.

WIRIN, RISSMAN & OKRAND,

By /s/ ROBERT R. RISSMAN,

Attorneys for Amalgamated Clothing Workers of
America, Local Union No. 81, CIO.

GILBERT, NISSEN & IRVIN,

By /s/ WILLIAM B. IRVIN,

Attorneys for Retail Clerks International Associa-
tion, AFL.

Received May 5, 1950.

United States of America
Before the National Labor Relations Board
Twenty-First Region

[Title of Causes.]

STIPULATION CORRECTING RECORD

It Is Hereby Stipulated between the parties to
the above-entitled proceeding that the transcript in
this matter shall be corrected in the following re-
spects:

Page 288, line 6, after "area" insert: "A.
Yes. Mr. Lund:"

Page 288, line 8, change "Yes" to "no."

As thus corrected, this testimony will read:

"Mr. Lund: I take it your sales by your
store are all made to residents in the Southern
California area? A. Yes.

“Mr. Lund: You don’t ship sales outside of California?”

“The Witness: No.”

Dated: April 28, 1950.

LATHAM & WATKINS,
THEODORE J. ELIAS,
HAROLD EASTON,

By /s/ R. W. LUND,
Attorneys for
Respondent Lee’s.

JESSE H. STEINHART,

By /s/ S. A. LADAR,
Attorneys for
Respondent Federal.

GENERAL COUNSEL OF THE NATIONAL
LABOR RELATIONS BOARD,

By /s/ GEORGE H. O’BRIEN.

WIRIN, RISSMAN & OKRAND,

By /s/ ROBERT R. RISSMAN,
Attorneys for Amalgamated Clothing Workers of
America, Local Union No. 81, CIO.

GILBERT, NISSEN & IRVIN,

By /s/ WILLIAM B. IRVIN,
Attorneys for Retail Clerks International Association,
AFL.

Received May 5, 1950.

Before the National Labor Relations Board
Twenty-First Region

[Title of Causes.]

Suite 607-613, Hearing Room No. 2,
111 West Seventh Street,
Los Angeles, California,
Tuesday, March 7, 1950.

Pursuant to notice, the above-entitled matter came
on for hearing at 10:00 o'clock a.m. [1*]

Before: Isadore Greenberg,
Trial Examiner.

Appearances:

GEORGE H. O'BRIEN,

111 West Seventh Street,
Los Angeles, California,

Appearing on Behalf of Robert N.
Denham, General Counsel.

SAMUEL A. LADAR,

Room 700, 111 Sutter Street,
San Francisco, California,

Appearing on Behalf of Respondent
Federal Stores, Division of Speigel,
Inc.

* Page numbering appearing at top of page of original Reporter's
Transcript of Record.

LATHAM & WATKINS,
THEODORE J. ELIAS,
HAROLD EASTON, by
RICHARD W. LUND,

411 West Fifth Street,
Los Angeles, California,

Appearing on Behalf of Respondent
Lee's Department Store.

GILBERT, NISSEN & IRVIN, by
ROBERT W. GILBERT and
WILLIAM B. IRVIN,

Suite 317, 117 West Ninth Street,
Los Angeles, California,

Appearing on Behalf of Retail Clerks
International Association, A. F. of L.

WIRIN, RISSMAN & OKRAND, by
ROBERT R. RISSMAN,

257 South Spring Street,
Los Angeles, California,

Appearing on Behalf of Amalgamated
Clothing Workers of America, Local
Union No. 81, C.I.O. [2]

PROCEEDINGS

Trial Examiner Greenberg: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the Matter of Federal

Stores Division of Speigel, Inc., and Retail Clerks International Association, A. F. of L., Case No. 21-CA-420; In the Matter of Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, doing business as Lee's Department Store, and Retail Clerks International Association, A. F. of L., Case No. 21-CA-481, both of which cases have been consolidated for the purposes of convenience for the purpose of this hearing.

In both cases, also, there is mentioned in the caption to the case as a party to the contract, the Amalgamated Clothing Workers of America, Local Union No. 81, CIO.

The Trial Examiner conducting this hearing is Isadore Greenberg.

Will counsel and other representatives of the parties please state their appearances for the record.

For the General Counsel?

Mr. O'Brien: Appearing for Robert N. Denham, General Counsel, is George H. O'Brien. My address is care of the National Labor Relations Board, 111 West Seventh Street, Los Angeles, California.

Trial Examiner Greenberg: For the respondent Federal [4] Store's Division of Speigel, Inc.?

Mr. Ladar: Appearing for Federal Stores is Mr. S. A. Ladar. My address is 111 West Sutter Street, Room 700, San Francisco, California.

Trial Examiner Greenberg: For the Respondent Lee's Department Store?

Mr. Lund: Latham & Watkins, Theodore J. Elias, and Harold Easton, by Richard W. Lund,

411 West Fifth Street, Los Angeles 13, California.

Trial Examiner Greenberg: For the charging party, the Retail Clerks? ,

Mr. Gilbert: For the charging party, Gilbert, Nissen & Irvin, by Robert W. Gilbert and William B. Irvin, 117 West Ninth Street, Los Angeles.

Trial Examiner Greenberg: And for the Amalgamated Clothing Workers, the party to the contract?

Mr. Rissman: Wirin, Okrand & Rissman, by Robert R. Rissman, 257 South Spring Street, Los Angeles.

Trial Examiner Greenberg: Are there any further appearances?

Mr. Ladar: I think I should make a correction there. I should say that the firm name of which I am a member is Jesse H. Steinhart. I am Samuel Ladar of that firm.

Trial Examiner Greenberg: Are there any additional appearances?

(No response.) [5]

The official reporter makes the only official transcript of these proceedings and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

Proposed corrections in the transcript should be submitted either by way of stipulation or motion to the Trial Examiner for his approval.

All matter that is spoke in the hearing room while

the hearing is in session is recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow automatic exceptions to all adverse rulings and upon appropriate request and order an exception will be permitted to stand to an entire line of questioning.

Any party shall be entitled upon request to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of such a request the Trial Examiner himself may ask for oral argument if, at the close of the hearing he believes such argument would be helpful to clarify the issues [6] and the contentions of the parties.

Any party shall also be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of fact or conclusions of law or both with the Trial Examiner who, before the close of the hearing, will fix the time for such filing.

Mr. O'Brien?

Mr. O'Brien: If I may have the exhibits, Mr. Examiner.

I am asking the reporter to mark for identification the following documents:

As General Counsel's 1-A, the Charge filed on

March 30, 1949, against the Federal Stores by Retail Clerks International Association;

As General Counsel's Exhibit 1-B, an Affidavit of Service indicating that a copy of the Charge was served upon The Federal Stores, 720 South Broadway, on March 30, 1949;

As General Counsel's Exhibit 1-C, an Affidavit of Service showing that a copy of the aforementioned Charge was served upon Amalgamated Clothing Workers of America, CIO, Local 81, on April 11, 1949;

As General Counsel's Exhibit 1-D, the First Amended Charge in the same case, 21-CA-420, filed May 3, 1949;

As General Counsel's Exhibit 1-E, an Affidavit showing that the Federal Stores was served with a copy of the First Amended Charge on May 4, [7] 1949;

As General Counsel's Exhibit 1-F, an Affidavit showing that a copy of the Amended Charge was served on Amalgamated Clothing Workers Local 81, on May 6, 1949;

As General Counsel's Exhibit 1-G, a Charge filed June 17, 1949, by the same Retail Clerks Union against Lee's Department Store;

As General Counsel's Exhibit 1-H, an Affidavit of service showing that a copy of the Charge was served upon Lee's Department Store on June 20, 1949;

As General Counsel's Exhibit 1-I, an Affidavit of service showing that a copy of the Charge against Lee's Department Store was served on the Amalgamated Clothing Workers on July 18, 1949;

As General Counsel's Exhibit 1-J, the Consolidated Complaint, issued January 31, 1950, in Cases Nos. 21-CA-420 and 21-CA-481;

As General Counsel's Exhibit 1-K, the Order Consolidating Cases and Notice of Hearing setting the hearing in the instant matter for this date, time and place;

As General Counsel's Exhibit 1-L, an Affidavit of Service of Order Consolidating Cases and Notice of Hearing, Charges and Amended Charge;

As General Counsel's Exhibit 1-M, a letter from T. J. Elias—his name was entered today as counsel by Mr. Lund—dated February 9, 1950, requesting an extension of time with [8] which to answer;

As General Counsel's Exhibit 1-N, an order dated February 13, 1950, extending the time for filing of answer to February 24, 1950;

As General Counsel's Exhibit 1-O, an Affidavit of Service of the Order Extending Time to File Answer;

As General Counsel's Exhibit 1-P, the Answer of Lee's Department Store filed February 24, 1950.

Trial Examiner Greenberg: Off the record.

(Discussion off the record.)

Trial Examiner Greenberg: On the record.

Mr. O'Brien: As General Counsel's Exhibit 1-Q, an Answer of Respondent Federal Stores Division of Spiegel, Inc., filed March 1, 1950;

As General Counsel's Exhibit 1-R, an Amendment to Consolidated Complaint, dated February 28, 1950;

As General Counsel's Exhibit 1-S, an Affidavit of Service showing that the Order Consolidating Cases, Notice of Hearing, Consolidated Complaint, Amendment to Consolidated Complaint, Charges and Amended Charge were served upon the following parties on February 28, 1950: Brown's, 824 South Broadway; Star Outfitting company, 919 South Broadway; Golden State Department Store, 210 South Broadway, Kay's Department Stores, 5127 South Broadway; and Credit Stores Association, 511 Lincoln Building, 742 South Hill Street, Los Angeles, California; [9]

As General Counsel's Exhibit 1-T for identification, an Affidavit of Service showing that the Amendment to the Consolidated Complaint was served on February 28, 1950, upon the parties named on the original service sheet.

(Thereupon the documents above referred to were marked General Counsel's Exhibits 1-A through 1-T for identification.)

Mr. O'Brien: I now offer General Counsel's Exhibit 1 in evidence.

Trial Examiner Greenberg: I assume all the parties, all counsel for the parties, have seen the documents in question.

Is there any objection to the admission of the formal papers?

Mr. Lund: No objection.

Mr. Rissman: No objection, although we did not receive a copy of 1-P, which is the Answer of Lee's Department Store.

Mr. Gilbert: I have no objection.

Trial Examiner Greenberg: I will ask counsel to furnish you a copy.

Mr. Rissman: I have seen the formal files. I have seen it.

Mr. Lund: It was mailed to the union.

Mr. Rissman: All right.

Trial Examiner Greenberg: There being no objection, General Counsel's Exhibits 1-A through 1-T, comprising the formal papers in this proceeding are admitted into evidence [10] as General Counsel's Exhibit 1.

(The documents heretofore marked General Counsel's Exhibits 1-A through 1-T for identification were received in evidence.)

Mr. Lund: May I see them just a moment?

Mr. Rissman: Before Mr. Lund makes his motions, I have a question of you, Mr. Greenberg.

As I read the Rules and Regulations, it would appear that Local 81, of the Amalgamated, my client, is a party to this proceeding, and a motion to intervene would not be necessary. I might correct it.

Trial Examiner Greenberg: I think it would be superfluous. Even in the absence of the granting of such a motion you would be granted just as much right to participate as you would if you were a party intervenor. You have a right to intervene as far as your interest in the matter appears.

Mr. Rissman: That's my understanding. Since we agree, I won't make the motion.

Trial Examiner Greenberg: Having had pre-

vious experience with parties to the contract, I think it might be well. It is impossible to define the area of your participation with any exactitude, but I think it can be generally defined as that area in which your interest appears; that is, insofar as the validity of the contract is concerned. I would sustain objection to your cross-examining witnesses as to matters which do not affect that particular part of the case, and which [11] duplicate either the examination which was actually made by respondents, the employers' counsel, or which they could have made.

Mr. Rissman: As I read the complaint, Consolidated Complaint, and as amended, all of the allegations relate very directly or indirectly to the contract situation.

Trial Examiner Greenberg: Well, that is where the difficulty in defining the area is concerned.

Mr. Rissman: I suppose we will have to leave the question open until we come to a specific point.

Trial Examiner Greenberg: When we have a specific issue on that, I will have to rule on it.

Mr. Rissman: I am sure you will.

Mr. O'Brien: Mr. Examiner, in connection with that, as Mr. Rissman pointed out his client is a representative—is a party to the contract and as such is a party to this proceeding. Not being made a respondent he is not required to file an answer.

Mr. Rissman: That is right.

Mr. O'Brien: But I think it might be very helpful if he would voluntarily file an answer so that

we can find out what his interest in this proceeding is.

Trial Examiner Greenberg: An answer to what? No complaint has been issued against the union represented by Mr. Rissman. I don't know how they can file an answer. I don't know whether [12] I would receive one.

Mr. Rissman: I have no intention of filing one.

Mr. O'Brien: I just wanted to raise that question, Mr. Examiner.

Mr. Rissman: As a matter of fact, I wouldn't know how to file an answer; I have never been a respondent.

Trial Examiner Greenberg: I think Mr. Lund indicated that he had some motions he wanted to present.

Mr. Lund: First, I should observe that my clients are 10 individuals as copartners doing business under the name of Lee's Department Store. You can all understand throughout this proceeding that we can speak of these respondents as Lee's or Lee's Department Store in the singular, and I will do so.

My first motion is that pursuant to Sections 102.24 and 102.33 of the Rules and Regulations of the Board, Series 5, Respondent Lee's Department Store hereby moves the Board, acting through its duly designated Trial Examiner, to sever and separate the case involving this respondent, No. 21-CA-481, from the case involving Respondent Federal Stores Division of Spiegel, Inc., No. 21-CA-420, upon the following grounds:

One, the order of consolidation issued by the Regional Director on January 31, 1950, was issued without authority and contrary to the Rules and Regulations of the Board and is, therefore, illegal and void.

Two, they would not effectuate the purposes of the Act [13] to consolidate these two cases and, three, numerous issues involving Respondent Federal Stores, Inc., are unrelated and unconnected in any way with the issues involving Respondent Lee's, and the effect of the consolidation would be to unduly complicate the record and increase the cost to respondent Lee's without any corresponding benefit or saving to the Board, the General Council, Respondent Federal Stores, or any other party.

By way of brief argument I want to observe, first, that as I read Section 102.33 of the Regulations, that is one place where the General Counsel has the authority reserved to himself, to in fact not designate his authority to the Regional Director. The Regional Director has no power to issue an order of consolidation. The Examiner will notice that the last part of that section contains a reference to that effect, exact language being:

“The provisions of Sections 102.9 to 102.32, inclusive, shall, insofar as applicable, govern proceedings before the General Counsel pursuant to this section, and the powers granted to Regional Directors in such provisions shall, for the purpose of this section—” which is the consolidation section— “be reserved to and exercised by the General Counsel.”

I think I know what your difficulty is, Mr. Examiner. It's my understanding that the part, 203 of the—— [14]

Trial Examiner Greenberg: Before we get the record confused any further, sir, I thought there were some rules and regulations that I had never been aware of before. I think inadvertently you have been referring to 103 something.

Mr. Lund: 102. The Rules and Regulations of the Board, previously codified in the Regulations as part 203, have been codified, as I understand it, as part 102 of State Title 29 of the Code of Regulations that was published in Volume 14 of the Federal Register 78. So while the Board——

Trial Examiner Greenberg: What you are referring to——

Mr. Lund: Is the old section.

Trial Examiner Greenberg: 203.33?

Mr. Lund: Which I now understand is 102.33.

Trial Examiner Greenberg: I wasn't aware of any recent codification that you refer to. I have in my hands the Rules and Regulations of the Board, Series 5 as Amended, August 18, 1948, which was published in a little blue covered pamphlet and in which the rules referring to consolidation are numbers 203.33. That is to avoid confusion.

Mr. Rissman: On the first sheet of the blue pamphlet you have is a notice.

Mr. Lund: "Subtract 101 from numbers carried in this edition."

Trial Examiner Greenberg: I have been fur-

nished by Mr. O'Brien with the notice referred to. It isn't that I have [15] been away from law school so long; I have been away from grammar school so long that I find it difficult to subtract two point something. But at any rate, I think the record is now clear as to the reference being made by counsel.

Mr. Lund: On my second point in connection with my motion to sever, we believe it is unreasonable and unfair, unduly expensive and burdensome to my clients to begin this case with that involving Federal.

I think the Examiner has briefly studied the complaint, anyway, and you will find in there that while there are some provisions involving the validity of the union shop clause, those allegations principally involve questions of law. So far as our law is concerned, the principal allegations are admitted, so there is not much in the way of evidence going to be required on that issue.

Respondent Lee's is charged with illegal discharge of one man with which Federal is not interested, and Respondent Federal is charged with illegal discharge of three employees with which we are not interested. And, in addition, so far as Federal is concerned, the allegations in Paragraph 13 of five different violations of Section 8 (a) (1) of which we have no concern whatsoever.

If this matter remains consolidated Lee's is going to be required to sit here for hours, or perhaps days and weeks, having no interest whatsoever in all those charges [16] against Federal. We don't believe that that should be required of us. It is unnecessary, un-

reasonable and unduly burdensome and we urge on that independent ground, aside from the invalidity of the order consolidating, that the Trial Examiner at this time grant our motion to sever the proceedings.

Mr. O'Brien: Mr. Examiner, as far as the technical question raised by Mr. Lund that the General Counsel has power to consolidate these cases—of course the Regional Director does not act under the authority of the General Counsel—the Regional Director had authority from the General Counsel before this notice of consolidation was issued.

Mr. Lund: That doesn't appear in this record.

Mr. O'Brien: As to the second matter that he would be inconvenienced by staying here for two or possibly three weeks listening to matters which are of no concern to his client, I am sure that during at least the noon recess we can work out an order of proof here so that it won't be necessary for him to attend during such time as matters which do not concern his client are presented, or are being litigated. And I am asking the Trial Examiner to defer ruling upon Mr. Lund's motion until such time as he has heard the testimony of my first witness, who will be Mr. Guyon, who has been secretary of the Association or counsel for the Association of which both respondents are members, and who negotiated the [17] contract which is presently under attack. I don't think it would be possible for the Trial Examiner to rule intelligently upon that portion of Mr. Lund's motion until he had heard such testimony.

Mr. Lund: I think he should rule on the basis of the pleadings. As I see it, it is a valid objection to proceeding on this consolidated case. There has been no order of consolidation by the General Counsel.

Mr. Gilbert: Mr. Trial Examiner, I want to join in the statements made by the attorney for the General Counsel, and also to say that having myself unsuccessfully on other occasions urged the point now urged by Mr. Lund, and having been advised by various Trial Examiners that it was their understanding of the Rules and Regulations that the General Counsel may act through its agents just as the Board may act through its agents in a matter of this kind, I am satisfied that the first point of that motion was not well taken.

And as to whether or not the Trial Examiner desires to follow the suggestion made by attorney for the General Counsel, I am satisfied that on the face of the pleadings these two party respondents, parties to a contract who are members of the same association handling their affairs with regard to collective bargaining or for the purpose of collective bargaining, can have no valid objection to the order of consolidation.

Mr. Lund: I want to observe, Mr. Examiner, that it is [18] generally true that the Regional Director has the power and authority to act for the General Counsel, but this section says specifically that so far as consolidation is concerned the powers of consolidation are reserved for the General Counsel and not the Regional Director.

Trial Examiner Greenberg: Well, if you will look at the order of consolidation, sir, you will see that its opening recital says, "The General Counsel for the National Labor Relations Board having duly considered the matter and deeming it necessary," and so forth, "hereby orders, pursuant to Section 203.64 (b) of the National Labor Relations Board Rules and Regulations, Series 5, that these cases be, and they hereby are, consolidated."

Now, it is true that that order of consolidation is signed by the Regional Director for the Twenty-First Region, but the——

Mr. Lund: Not even that. You have got a rubber stamp. Nothing is signed by the Regional Director.

Trial Examiner Greenberg: This is a mimeographed copy of the order and I take it there is no question being raised as to its authenticity?

Mr. Lund: I wouldn't dispute that, no; but it is only signed by the Regional Director.

Trial Examiner Greenberg: "In witness whereof, the General Counsel . . . on behalf of the Board, has caused this Consolidated [19] Complaint . . . to be signed by the Regional Director," and so forth.

Mr. Lund: That's what the Regional Director says. We have nothing from the General Counsel.

Trial Examiner Greenberg: I can't see any question but that the act of ordering these cases consolidated was the act of the General Counsel acting through his agent in this Regional Director. So, frankly I can't see any merit——

Mr. Lund: Have you read the provisions of the Regulations? It plainly means to me that the Re-

gional Director has no power to act on consolidations.

Trial Examiner Greenberg: So I have no hesitation, therefore, in denying that part of your motion to sever, which is based on the technical ground that the order of consolidation heretofore issued is invalid.

Now, as to the question of that part of your motion which is predicated on the argument of injustice to your client in proceeding, I gather from the pleadings that one of the important issues in this case is the issue of jurisdiction based on disputed matters with regard to commerce. I would gather further from the pleadings and from remarks made by counsel so far in this hearing, that it is going to be the position of the General Counsel, at least, that in order to decide this question of jurisdiction both respondents have to be looked upon as having been associated together in an [20] association of employers in their collective bargaining, and having entered into a common contract through their joint bargaining representative; and that the matter of commerce has to be determined by looking at it from the point of view.

Without of course hinting at any position as to the merits of General Counsel's position, I think that if that is going to be the position of one of the parties here, it will be necessary, at least for part of this case, to have both parties here in one proceeding to determine that aspect of the matter.

I will, therefore, at this time, for the time being at least, deny the motion to sever in its entirety.

Mr. Lund: I would like now to make the additional motion, pursuant to Section 102.24 of the Rules and Regulations, Respondent Lee's Department Store hereby moves the Board, acting through its duly resigned Trial Examiner, to dismiss the complaint herein in its entirety on the ground that the General Counsel has failed to join an indispensable party as a party respondent, to wit, the Amalgamated Clothing Workers of America, Local Union No. 81, CIO.

By way of argument I want to point out that the complaint merely names that union as a party to the contract and does not make it a party respondent. No order is sought against the CIO. The gist of the whole complaint and proceedings is that my client and the CIO entered into and enforced a contract containing illegal union shop provisions. [21] If that is true and it is illegal, then on that ground the Board has jurisdiction and we are jointly liable. We submit that if there are any financial penalties or remedies involved it would be improper and illegal and unwarranted to require this respondent to bear the entire cost and not the union to bear its share. These provisions of the contract are for the union's benefit. As the complaint alleges domination of the union under 8 (a) (2), it is, therefore, for the existence and benefit of the union. To require this respondent to bear the full responsibility we feel is unauthorized, and until and unless the party jointly responsible with this party is made a party respondent the matter should be dismissed for failure to join an indispensable party.

Trial Examiner Greenberg: Now, as to that, I don't think I care to hear any argument. The motion is denied. I might state that I have no discretion as to the issuance of complaints. That is a matter which is by the statute given entirely into the hands of the General Counsel, and I could not presume, of course, to do anything which would invade that realm which was given to his discretion.

Mr. Lund: No, you couldn't.

Trial Examiner Greenberg: Furthermore, even for the General Counsel to move to issue a complaint—charges have to be filed. The motion is denied.

Mr. O'Brien: In that connection I refer Mr. Lund to [22] Section 10 (b) of the National Labor Relations Act.

Mr. Lund: I have read it. I know it by heart.

I now make the following motion, pursuant to Section 102.24 of the Rules and Regulations of the Board, Series 5: Respondent Lee's Department Store hereby moves the Board, acting through its duly designated Trial Examiner, to order Paragraph 9 of the Consolidated Complaint herein stricken upon the ground that the allegations of said paragraph are redundant and immaterial.

After you have had an opportunity to briefly examine that I would like to argue.

Mr. Rissman: What paragraph is that?

Trial Examiner Greenberg: That is the paragraph that relates to the deduction of union dues.

Mr. Lund: We believe that that entire paragraph is immaterial. It states by its actions that

respondent coerced and deprived the respective employees of their rights. It doesn't say what rights, whether it has deprived them of their rights under the Fair Labor Standards Act or Anti-Trust laws or National Labor Relations Act, or what.

Now, we do know that if this respondent is engaged in commerce, subject to the Taft-Hartley Act, it would be a violation of Section 302 of that Act for us to check off dues without written authority. But under subdivision (d) of Section 302 of the Act such conduct is made a misdemeanor and is not [22-A] anywhere made an unfair labor practice. On the contrary, Section 302 (e) specifically grants to the District Courts of the United States jurisdiction to enjoin violations of Section 302. Therefore, the National Labor Relations Board has no jurisdiction over any violations of Section 302.

Now, further, I think it is obvious that if our contract with the union shop provision is illegal, that aside from this requirement of 302 of the written authorization, there can be no violation of the National Labor Relations Act because we compulsorily check off the dues of the employees under a union shop clause. I need cite no authority for that.

So that if there is any illegality of the check-off here, aside from 302, it is only because our union shop clause is illegal, and we come right back to the point of Paragraph 8, the legality or illegality of that clause of the contract, if that clause of the contract is illegal.

I assume there are many ramifications as a result of illegality of that provision, not any one of which

results in an unfair labor practice. It is the union shop provision that is legal or illegal, and nothing else.

Therefore, we think that this whole Paragraph 9 is completely superfluous and immaterial to the proceeding. I think it is clear you can't come in here before this Trial Examiner and charge violations of Section 302 of the Taft-Hartley Act; that is a misdemeanor. [23]

Mr. O'Brien: This is the first time I have ever had respondents come in here and object to particularity in the complaint, Mr. Trial Examiner. The matters set forth in the paragraph to which Mr. Lund objects are the same matters which were considered by the—I don't know whether the case got to the Supreme Court or not, it was the Baltimore Transit—I feel reasonably certain it did—but the acts alleged in there were acts of assistance and domination in violation of Section 8 (a) (2) of the Act.

Mr. Gilbert: Mr. Trial Examiner, I should just like to call your attention to Paragraph 14 of the Consolidated Complaint, which points out, for the benefit of the respondent, the particular statutory provisions invoked with regard to Paragraph 9, reading as follows:

“The acts and conduct set forth in Paragraphs 8 and 9 hereof, Respondent Federal and Respondent Lee's have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a), subsections (1), (2) and (3) of the Act.”

I think it is periodically clear that the General Counsel was not invoking the Fair Labor Standards Act or the Motor Vehicle Code of California or anything else.

Mr. Lund: I think you missed the point of my argument, Bob. My point is if the union shop provisions of this agreement are valid, then compulsory check-off is also valid. [24]

Trial Examiner Greenberg: Does that necessarily follow?

Mr. Lund: Yes. I haven't bothered bringing you cases. There are 75 per cent of the CIO unions could have compulsory check-off. I think the Board's cases are legion under the union shop provisions so far as the Wagner Act is concerned. It is true that it may be illegal under 302 of the Taft-Hartley Act if you don't require authority. That is not the concern of the National Labor Relations Board, that is a matter of concern of the U. S. attorneys.

So Section 9 boils down to: Is the union shop illegal? If it is illegal then 9 adds nothing.

Trial Examiner Greenberg: Without directing the discussion to an issue which may prove to be academic, let's confine ourselves, then, to the fact that the complaint does allege the invalidity of the contract which is here in question. I would take it that Paragraph 9, then, assuming for the sake of argument the invalidity of the contract, simply alleges a further act of assistance to the Amalgamated on the part of the respondents by the deductions which are mentioned in Paragraph 9.

Mr. Lund: By its only illegal act of assistance,

because the union shop may be invalid. You can't make two crimes out of one fact which makes an illegality.

Trial Examiner Greenberg: Its further detailed allegations of the further acts on the part of the respondent, which are alleged to be illegal. I think the statements of the [25] General Counsel further amplifies that, so I will deny the motion to strike Paragraph 9 of the complaint.

Mr. Lund: I have another motion. This one I think the Examiner will grant.

Pursuant to Section 102.24 of the Rules and Regulations, Series 5, Respondent Lee's Department store hereby moves the Board, acting through its duly designated Trial Examiner, to strike from the complaint herein the allegations in the following paragraphs, on the ground that a complaint based on such allegations is barred by the six months limitation period prescribed in the proviso in Section 10 (b) of the Act: All of Paragraphs 7, 8, 9, 12 and 14 and each of them and the reference in Paragraph 19 to subsection (2) of Section 8 (a) (2) of the Act. Upon the same grounds and with reference to the same allegations and charges, this respondent moves in the alternative, that the complaint be dismissed.

The complaint by way of argument—

Trial Examiner Greenberg: Excuse me just a moment before we get lost. In Paragraph 14—Paragraph 19, pardon me—is the reference to subsection (2), 8 (a) (2)?

Mr. Lund: That is right.

Trial Examiner Greenberg: All right, sir.

Mr. Lund: The complaint alleges in Paragraph 8 that invalidity of the contract on June 17th—pardon me, December 17, 1948. The charge herein was filed on June 17, 1949 [26] and was served on this respondent on June 21st—June 23, 1950. General Counsel's Exhibit 1-H, an affidavit of service of a copy of the charge on Lee's, shows that it was mailed on June 20th, return receipt showing delivery on June 23rd, and the 23 is crossed off and there is a 21 written in. Let's take the date 21st or June 20th for that matter. The contract having been executed December 17th, the charge having been filed June 20 of the following year is three days in excess of the six months period provided by the Statute of Limitations.

Now, it is clear that if this union shop provision is illegal, that we violated the Act when the contract was signed on December 17, 1948, as alleged in this complaint—that is in Julius Resnick, the Great Atlantic Tea Company case out of this region, and a number of other cases by the Board—and at that time the question of the illegality of the union shop provisions of this contract became actionable and the six months period began to run, after June 17, 1949, we submit that that contract could not be attacked.

So for that reason, as the first one, we think it is not within the statutory period and, secondly, the charge that was filed and that was served on us on or about June 23, 1949, makes no reference to any illegal union shop provision or contract, that is,

challenge or attack. Therefore, there isn't any charge forming the basis of that whole paragraph or complaint. [27]

Trial Examiner Greenberg: Which Exhibit here is the charge? There was only one charge in that case?

Mr. O'Brien: No amended in the Lee's case.

Mr. Lund: The Exhibit is G, is the original charge.

Trial Examiner Greenberg: Now, did you mis-speak inadvertently when you referred to the date of the execution of that contract as——

Mr. Lund: December 17th.

Trial Examiner Greenberg: I see it in the complaint as December 17th.

Mr. Lund: That's right.

Trial Examiner Greenberg: And the charge is dated June 17, 1949. Now, you are referring to the time of service upon——

Mr. Lund: It was filed June 17th and the affidavit was mailed on June 20th. According to the return receipt it was received June 23rd or June 21st, the return receipt is marked. That affidavit is General Counsel's Exhibit 1-H.

Trial Examiner Greenberg: All right. Now, Mr. O'Brien, did you wish to be heard?

Mr. O'Brien: This seems very simple to me, sir. On December 17, 1948, Lee's Department Store signed a closed shop contract with the union, kept it in effect for two days and then dropped it after the two days, and then six months later the charge had been filed and the statute of limitations would

run. But [28] this is a continuing violation. This contract once it was signed became binding upon the parties, and it is still binding upon the parties. The statute of limitations wouldn't start to run on that contract until such time as the parties disavowed it.

Mr. Lund: In other words, it never runs, according to that argument.

In that connection I want to call the Examiner's attention to the Goddal case, which involved somewhat the same problem, Case No. 20-CA-597, decided by the Board in October, 1949. There a 10-cent wage increase was challenged as having been given in violation of 8 (a) (1) to discourage membership in the union. The charge relative to it was filed some seven months after the wage increase was put into effect, and it was there alleged the wage increase was continuing with every week the employee gets that pay check. Recognizing that fact, they are discouraged from joining the union or continuing their membership in it. And the Board says, "Oh, no, six months from the time the wage increase was put into effect is the limitation period."

The fact that the effect of the illegality may continue to run after the six months doesn't change the application of the statute. After all, there is no point in the statute if it doesn't cut off the effect of illegality at some point.

Trial Examiner Greenberg: Does anyone else wish to be heard? [29]

This is the fourth of a series of motions addressed to me by the attorney for Respondent Lee's Department Store, the last of which one now under con-

sideration was prefaced with a fervent hope or expression of hope that he would have better luck with the fourth than he had with the first three. I therefore find it rather embarrassing to announce that I have decided to deny this motion as well. I do so with real regret, sir.

Mr. Lund: Well, there I will not bother taking exception, since exceptions are reserved. I am satisfied the Trial Examiner is inherent.

The next one I am willing to wager the Trial Examiner will grant.

Pursuant to Sections 102.23 and 102.24 of the Rules and Regulations of the Board, Respondent Lee's Department Store hereby moves the Board, acting through its duly designated Trial Examiner, to grant it permission to file an amended answer herein to the complaint as amended. We have not yet filed any answer to the complaint as amended.

Mr. O'Brien: No objection.

Trial Examiner Greenberg: The motion is of course granted.

Mr. Lund: May we go off the record for just one moment?

Trial Examiner Greenberg: Yes, sir. Off the record.

(Discussion off the record.)

Trial Examiner Greenberg: On the record. [30]

The attorney for the Respondent Lee's Department Store has indicated to me he has already prepared the amended answer which he was just given leave to file, and has asked opposing counsel whether they will waive verification of the answer by his

client since it is now inconvenient to find a notary public.

What is the position with respect to that of Mr. O'Brien?

Mr. O'Brien: Of course I am willing to either waive or acknowledge it as a Board agent.

Trial Examiner Greenberg: Then you will waive the requirement for verification.

And you, sir?

Mr. Gilbert: I understand that it has been read by one of Mr. Lund's clients and signed by him as true and correct, and upon that representation I also waive verification.

Trial Examiner Greenberg: As far as Mr. Rissman is concerned, I don't know whether you would be considered a party adverse.

Mr. Rissman: I would be willing to waive as necessary, but I don't know any rules and requirements to have it verified in the first place.

Trial Examiner Greenberg: Oh, yes; there are.

Mr. Lund: Not verified, but sworn.

Trial Examiner Greenberg: Then I will, in view of the waiving of that requirement by counsel, receive the amended [31] answer.

I ask the reporter to mark it as General Counsel's Exhibit 1-U, which would be the exhibit next in order, I believe, so that it can be made a part of the formal papers in this case.

(Thereupon the document above referred to was marked General Counsel's Exhibit 1-U for identification.)

Mr. Lund: I wonder if respective counsel would not stipulate on the record that they have been served copies of this answer.

Mr. Rissman: I will acknowledge service.

Trial Examiner Greenberg: Let the record show that the Trial Examiner has just seen copies of the answer being given to all counsel in the case.

If there are no objections, I will receive in evidence as General Counsel's Exhibit 1-U, the amended answer just filed by the Respondent Lee's Department Store.

(The document heretofore marked General Counsel's Exhibit 1-U for identification was received in evidence.)

Mr. Lund: I say now, Mr. Examiner, I was hoping my motion to sever might take care of this problem, but I have a commitment this afternoon for a hearing that was scheduled long before this matter came to my attention. And while it may not be necessary to refer to it again, I also have a commitment this coming Friday afternoon. So at the proper time I will move either to postpone the hearing this afternoon [32] or for a partial granting of my motion to sever. That if the Trial Examiner wants to go on this afternoon, I be directed that that is some part of the case not involving my client. I have no objection for the next two weeks on that basis.

Trial Examiner Greenberg: As to the latter part of your request, I suggest that at the first recess you take that up with counsel and find out whether

it is feasible to proceed this afternoon in your absence on matters in which your client would have no interest. If such arrangement could be made you would be willing to waive the requirement of your presence.

Mr. O'Brien: For the convenience of other parties here, and as I have indicated to everyone here, I intended to call Mr. Guyon as my first witness.

Do you want to go off the record?

Trial Examiner Greenberg: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Greenberg: On the record.

Mr. Ladar: It is not too important, but I want to be sure that you have in mind the point that I have in mind, and that is that the amended complaint was served on me after I had filed my answer. I haven't filed any answer to the amended complaint, and I would like to reserve the right to do it, or consider now that I deny generally and specifically each and all of the allegations on the amended complaint. If you want to do that to save some time—— [33]

Mr. O'Brien: That is as to General Counsel's——

Trial Examiner Greenberg: Then you would simply like to make as your amended answer your statement that you have just finished making orally on the record and rest upon that as your amended answer?

That certainly is acceptable to the Trial Examiner in the absence of any objection.

Mr. Ladar: And then I would also like to join in the motion that Mr. Lund made which was his fourth motion, except insofar as it relates to the date of filing of the charge. The charge in this case was filed on Federal Stores at an earlier date than it was upon Lee's. But there are other phases of his motion in which I would like the record to show that I join on behalf of Federal. I don't want to repeat any arguments.

I think also that I would like to join in the second portion of Mr. Lund's motion in which he asks that the complaint be dismissed because of the absence of an indispensable party. I would like to say also that I would like to add to his motion a request that the Board, through the Trial Examiner, order the CIO to be brought in on the ground that as an indispensable party justice cannot be done in this case without their presence. I will not argue; I will submit it to you.

Trial Examiner Greenberg: I would like to simply ask you this—and I will give you time to give your answer to it if [34] you would like—to have you point out to me what authority I would have to make such an order. As I say, we can wait until after the recess.

Mr. Ladar: I would like to delay you on that. As long as the record shows the motion.

Mr. Rissman: To the extent of those two motions, the one made by Mr. Lund and the one made by Mr. Ladar requiring any reply, I say we don't object to that portion of the motion which asks for the dismissal of the complaint. In fact, we join with

it. With respect to that portion where it says the Amalgamated is an indispensably party, I do not agree, first, as the Trial Examiner has indicated, the General Counsel would have no authority to issue a complaint without a charge having been filed. Secondly, the Amalgamated is not an indispensable party, because if the allegations of the complaint are sound and are sustained with respect to the contract, the Board would order the two respondents to cease giving effect to the contract. It wouldn't be necessary to have any order running against the Amalgamated as far as the invalidity of the contract is concerned.

Trial Examiner Greenberg: Off the record.

(Discussion off the record.)

Trial Examiner Greenberg: On the record.

With reference to Mr. Ladar's request that the record show that he joined in the motions made by Mr. Lund, if there [35] is no objection, the record may show, then, that Mr. Ladar did join in those motions or the portions of them as defined by counsel on the record. The Trial Examiner will, of course, allow the same automatic exceptions to stand to his adverse rulings to those motions on behalf of Mr. Ladar and his client as automatically accrue to the maker of the motions.

Is that satisfactory?

Mr. O'Brien: Yes, sir.

Trial Examiner Greenberg: We will now take a five-minute recess.

(Short recess taken.)

Trial Examiner Greenberg: The hearing will resume.

Mr. O'Brien: Mr. Guyon, would you take the stand, please.

FRANK R. GUYON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Greenberg: Would you please give us your full name and address.

The Witness: Frank R. Guyon, G-u-y-o-n, 2322 Observatory Avenue, Los Angeles.

Direct Examination

By Mr. O'Brien:

Q. You are a member of the California Bar, are you not, sir? A. Yes.

Q. And are you an officer of Credit Stores Association? [36] A. I don't—

Mr. Lund: I object to the question on the grounds it assumes a fact not in evidence, that there was such a thing as credit stores association.

Trial Examiner Greenberg: Sustained.

Mr. O'Brien: Thank you, Mr. Lund.

Q. (By Mr. O'Brien): Over what period of time have you represented Respondent Lee's?

A. Well, about 13 years, possibly.

Q. Thank you, sir. And over what period of time have you represented Respondent Federal?

A. About the same time.

Mr. O'Brien: Thank you, sir.

(Testimony of Frank R. Guyon.)

With that introduction I would like to invoke Paragraph 43 B of the Federal Rules of Civil Procedure and call Mr. Guyon for cross-examination.

Trial Examiner Greenberg: Very well.

Mr. Lund: I want to observe I don't think we are going to quibble as to what is cross-examination and what isn't of this witness. As I read 43 B in the Federal Rules of Civil Procedure this fellow doesn't come under it. He is not an officer, director, manager or agent. That is what it applies to.

Mr. O'Brien: It will develop if you wish me to qualify him. I have thorough confidence in this witness, and I think we all [37] do.

Trial Examiner Greenberg: Let's not quibble on the record. I have already ruled. Let's proceed.

Q. (By Mr. O'Brien): Now, Mr. Guyon, what is the Credit Stores Association?

Mr. Lund: I object to the question on the ground it assumes a fact not in evidence, that there is such a thing as the Credit Stores Association.

Trial Examiner Greenberg: Will you please ask that question first and satisfy Mr. Lund, Mr. O'Brien?

Mr. Lund: I am not trying to quibble or be technical. It is a vital point.

Q. (By Mr. O'Brien): Is there such a thing as a Credit Stores Association?

A. I don't believe there is.

Q. All right. Now, then, will you explain your answer, sir?

A. What do you mean?

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: Was there ever such an organization?

The Witness: An organization by that name was formed.

Trial Examiner Greenberg: When?

The Witness: 1937.

Trial Examiner Greenberg: Were you connected with it at any time?

The Witness: Yes. [38]

Trial Examiner Greenberg: In what capacity?

The Witness: I was named in the early years, about the time it was formed, as a secretary. Not elected, named as a secretary by the first board of directors.

Trial Examiner Greenberg: Was that a paid office?

The Witness: No, not at the time.

Trial Examiner Greenberg: What was the purpose of that organization?

The Witness: The purpose was to—I'll have to go back a little on that.

A certain number of member firms of the California Merchants Association decided—made agreements with some American Federation of Labor Unions. After those agreements were made, the Association, the forming of the Association, was a suggestion of mine because of the fact that other members of the Southern California Merchants Association wanted it to be very clear to everyone that this wasn't the Southern California Merchants Association that was involved in the union.

(Testimony of Frank R. Guyon.)

Now, also, in drawing up the purposes of the organization it was decided that as long as we had an organization—I say “we” referring to those stores that signed contracts with the American Federation of Labor unions—it would be a nice idea if those particular firms had an association which would give some power to their board of directors to arbitrate any [39] differences between the unions and the firms who had contracts with those unions.

The purpose of the Association, therefore, was to attempt to keep peaceful relations between the firms involved in that so-called Association and those unions.

Trial Examiner Greenberg: Was part of that purpose that the Association negotiate contracts with unions on behalf of its members?

The Witness: None whatsoever.

Trial Examiner Greenberg: Now, I was just at that point thoroughly confused about the existent or nonexistent organization. I wanted to get the thing clear in my mind. That's why I asked these few preliminary questions.

Now, it seems to me that whether or not that organization still exists, or existed at the time material named in the complaint, are facts which are susceptible to ascertainment. Somebody around here must know whether or not it exists, and I would suggest that the parties try to reach a stipulation of fact up to the point, at least, where the

(Testimony of Frank R. Guyon.)

contested issues begin so we can save some time. Now, does that suggestion sound fruitful?

Mr. Lund: I think it is a vital issue in the General Counsel's thinking. I see no possibility about stipulating.

Trial Examiner Greenberg: Anything——

Mr. Lund: I wouldn't say anything about the existence. [40] This witness says it doesn't exist.

Trial Examiner Greenberg: I guess you will have to go ahead and litigate the matter out.

I feel like you, Mr. Lund, I never cease trying.

Q. (By Mr. O'Brien): Mr. Guyon, did you have anything to do with the formation of Credit Stores Association? A. I entered into it.

Q. And that was in 1937, sir?

A. I believe it was in the latter part of 1937.

Q. And was that a corporation not for profit?

A. No corporation.

Q. Was there any formal document which members were required to sign?

A. They weren't required to sign anything. Some of them did sign a set of by-laws; others did not.

Q. And those by-laws were written when?

A. At the time the organization was formed.

Q. Were they written by you? A. Yes.

Q. And have you operated under those by-laws from the time of formation until the present time?

A. The question of definition of operation, I don't think we ever operated under them.

Q. Have you ever invoked those by-laws in any

(Testimony of Frank R. Guyon.)

proceeding before the Board? [41] A. Never.

Q. Never? A. Never.

Q. I may have to refresh your recollection, sir. Do you recall writing to Mr. Alden R. Taylor, Field Examiner for the Board?

A. At least once.

Q. On November 29, 1948, and enclosing therewith a copy of the by-laws of the Credit Stores Association, do you? A. Yes.

Q. And of that date did you consider those by-laws to be in effect?

A. No. I have come to the conclusion lately that they weren't in effect at all, and that the association hasn't been in existence for seven or eight years.

Q. And when did you come to that conclusion?

A. Just recently in reviewing in my mind the circumstances back in the history of these contracts, and so forth.

Q. In consultation with Mr. Lund, sir?

A. No, not at all.

Q. In consultation with me?

A. In consultation with nobody. Lying in bed and thinking back of things that have happened, trying to get a sequence of events.

Mr. O'Brien: Mr. Reporter, would you mark this document [42] for identification as General Counsel's Exhibit No. 2.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

(Testimony of Frank R. Guyon.)

Q. (By Mr. O'Brien): Mr. Guyon, I show you a document marked for identification as General Counsel's Exhibit No. 2 and ask you if you recognize it. A. I think I do.

Q. Was that typed in your office, sir?

A. I can't tell whether it was or not.

Q. You can't tell by looking at it, but it might help you if you saw the remainder of the communication which accompanied it. Would that help, sir?

A. No. I can't definitely identify this particular piece of paper. It might be copied several times.

Q. I see, sir.

A. It appears to be. If you want me to answer the question of what it appears to be to me, I would be glad to answer it.

Q. As of November 30, 1948, which is the date stamped on that document, you believe the organization was still in existence?

A. I don't believe I even gave it a thought one way or the other, because it had been going along for some years, drifting along making use of the name, and so forth, that I never gave it a thought until these matters began to come to the fore. I commenced to examine back and I ran into a certain set of circumstances that I vaguely thought of many times, and it became [43] a question in my mind then of trying to decide for myself whether it was still in existence. I came to the conclusion—I may be wrong—I came to the conclusion that

(Testimony of Frank R. Guyon.)

it hasn't been in existence since a certain set of facts occurred in 1941.

Q. 1941. What were those facts, sir?

A. May I refer to this?

Q. Certainly, sir.

A. In this document here—do you wish to name it?

Q. It is General Counsel's Exhibit No. 2 for identification, sir.

A. I said I answered your question before, stated I thought I could identify it, but you didn't say as what.

There was a provision in the by-laws of that Association which ran something like this:

“Membership in this Association shall be limited to firms doing a retail credit business in Los Angeles County and any such firm, as a condition to becoming a member of the Association, shall be required to sign, and thereby become a party to, the agreement of August 27, 1937, and any subsequent agreements made between the Credit Stores Association and/or its members on the one hand, and labor unions on the other hand.”

Now, in 1941, contracts with the A. F. of L. unions were up for renewal. I can't recall clearly one point of how many, but at least the majority of the members decided that they [44] could not come to agreement again with that union. They at that point—there was a difference of opinion and a

(Testimony of Frank R. Guyon.)

certain number of them signed contracts with the Amalgamated Clothing Workers; others did not.

Then some of those who had, shortly after—I have forgotten how long—some of those who had signed contracts with the Amalgamated, later dropped the contracts and signed with the A. F. of L. again.

Those happenings at the time caused a little commotion, differences of opinion, and so from that time on the by-laws were never invoked.

The other provision in the by-laws ran something like this:

“Duties of Directors: To decide all questions arising as to interpretation of any agreement made with the labor unions, to which the Association and its members are parties, and to enforce the performance by members of their obligations under such agreements, when such enforcement does not conflict with a decision by a joint committee of representatives of the Association and the union.”

That all seemed to end right there when certain numbers went over to the Amalgamated. There never after that was any attempt to even arbitrate on the part of the Association, nor its directors, nor did they undertake any other function in connection with those by-laws. There was never another [45] election of officers and directors after that so, therefore, there never was a formal meeting held after that of any kind.

(Testimony of Frank R. Guyon.)

I have been pondering over that, and in my honest opinion the Association actually became non-existent at that time.

Q. And prior to 1941 weren't you the only acting officer in the Association?

A. I don't know what you mean by acting officer. I have other employment; I wasn't their employee at the time. I think I was more acting officer than any other officer.

Q. You were secretary, were you not, sir?

A. Yes.

Q. And in 1941 who were the members of the Association?

A. Well, I don't know that I can recount them all, because several of them dropped out.

Q. I might be able to suggest something to you. Was Browns a member? A. Yes.

Q. Was Federal a member? A. Yes.

Q. And Federal then had three stores, or do you know? A. I can't be sure.

Q. You can't be sure?

A. The number of stores they have had has varied in the 22 years that I have been with the Southern California Merchants Association, so I couldn't be sure at that time. [46]

Q. And was Golden State a member?

A. Yes.

Q. Kay's a member? A. Yes.

Q. Lee's a member? A. Yes.

Q. And Star was a member? A. Yes.

(Testimony of Frank R. Guyon.)

Q. And you say the number of stores has varied? A. Are you speaking of——

Q. You don't know about these others?

A. Well, I think that at that time Federal was the only one that had more than one store in that group.

Q. You belong to the Southern California Merchants Association?

A. Manager of the association.

Q. Manager of the association for about 20 years. And what is the business of that, sir?

Mr. Lund: I object to the question on the grounds of incompetence, irrelevance and immateriality.

Mr. O'Brien: It's going to be very important, and I may as well lay the foundation now if that is the way.

Trial Examiner Greenberg: You say that the materiality of that line of questioning will appear shortly?

Mr. O'Brien: Well, if Mr. Lund has any questions I can [47] lay a foundation for that.

Mr. Lund: I can't possibly see the materiality. It might be.

Trial Examiner Greenberg: I have no way of knowing whether it is material or not, and I am going to rely on you, Mr. O'Brien, not to pursue a line of questioning which isn't relevant to the issues here.

I am going to overrule the objection for the time

(Testimony of Frank R. Guyon.)

being. I will be receptive to a motion to strike if the materiality doesn't soon appear.

Mr. O'Brien: Thank you, sir.

Q. (By Mr. O'Brien): Now, I have named Browns, Federal, Golden State, Kay's, Lee's, Star——

Trial Examiner Greenberg: There is a pending question which hasn't been answered.

Mr. O'Brien: I will withdraw the question with the Examiner's permission.

Trial Examiner Greenberg: Yes.

Q. (By Mr. O'Brien): Were there any other stores that you ever considered members of the Association? A. Yes.

Q. And who were they, sir?

A. Well, one of them was Victor Clothing Company, and one was Franklin Outfitting Company.

Q. Franklin?

A. Franklin. And Farley's—— [48]

Q. F-a-r-l-e-y-s?

A. Yes. I am quite sure there was another, at least one of them I am positive of—King Outfitting Company.

Q. And King Outfitting Company.

Now, what was it that all these people had in common?

A. Well, in relation to what, before or after?

Q. To their credit business, sir.

A. The Southern California Merchants Association was an association that they belonged to.

Q. And that was what, sir?

(Testimony of Frank R. Guyon.)

A. Primarily a credit bureau with some trade association functions with respect to effecting retail credit business.

Q. And what was the value to them of membership in the Southern California Merchants Association?

A. Interchange of credit information really. The interchanging point had the files, the credit files.

Q. If I may lead you a little bit, sir. All of these stores operate on the principle of either nothing down or a dollar down?

A. No, I wouldn't say that at all.

Q. What is it, sir?

A. I think I can say this, that the by-laws of the Southern California Merchants Association requires, as a condition of membership, that a retail firm do a portion, at least, of their business under an installment payment plan. But the [49] types of installment payment, of course, vary widely and some of the members of our Association at present would feel very much offended if we even called them an installment store, to say nothing of a no down payment and so forth.

It comprised, and still does comprise, perhaps, a vast majority of all firms in the city of Los Angeles and vicinity that do a substantial portion of their business on the installment credit plan.

Q. That is, this merchandise, I am referring now to the Southern California Merchants Association, that is a service granted to merchants who

(Testimony of Frank R. Guyon.)

sell a substantial portion of, shall we say, nondurable and nonreclaimable merchandise?

A. Well, part of that is correct, a service rendered. The Association is owned by the members.

Trial Examiner Greenberg: Just a moment. Isn't there enough—excuse me, sir.

Mr. O'Brien, isn't it enough for the purpose of this proceeding that the description already in the record stand, that this Association is made up of members who do have merchants who do a credit business; that the Association renders a service to them of acting as an exchange bureau for credit information? Do we have to go into details about it any further? I don't know what you have in mind. I am trying to save time here.

The Witness: I want to make it clear. [50]

Mr. O'Brien: No, this witness in his own words can describe perfectly the business of these clients.

Trial Examiner Greenberg: Hasn't it been sufficiently described so far for the purpose of this proceeding?

Mr. O'Brien: I would like to ask one or two more questions along the same line, Mr. Examiner.

Q. (By Mr. O'Brien): Isn't it a fact that none of the members of the Association could operate without a nation-wide credit hookup?

A. Which Association are you referring to, the Southern California Merchants Association?

Q. No, I am referring to the Credit Stores Association.

Mr. Lund: Just a minute. I am going to ob-

(Testimony of Frank R. Guyon.)

ject to the question as not within the pleadings of this case. I assume, from the question he is asking now, it bears on commerce, and he has got some commerce allegations in the complaint; nothing of this character whatsoever.

Mr. O'Brien: This is commerce.

Mr. Lund: You have got your commerce allegations. We are prepared to meet you.

Trial Examiner Greenberg: Overruled.

The Witness: I want to be sure before I answer the question whether he is—state that all of my answers prior to this one for some time have been assuming you were talking about Southern California Merchants Association. [51]

Q. (By Mr. O'Brien): That is right, sir. Now I am going to come back to Credit Stores Association——

A. Would you repeat the——

Q. ——and your six present members.

Mr. Lund: I object to that question on the grounds it assumes a fact that——

Trial Examiner Greenberg: When you say "present members" it is contrary to this witness' testimony.

Mr. O'Brien: This might be a good place, Mr. Examiner, to identify another document.

Mr. Rissman: Has General Counsel's Exhibit 2 for identification been offered?

Mr. O'Brien: It has not been offered.

Mr. Reporter, I ask you to mark for identification a mutilated document entitled "Agreement,"

(Testimony of Frank R. Guyon.)

entered into this 31st day of January, 1947, to become effective the 31st day of January, 1947, and continuing until the 31st day of January, 1949, as General Counsel's Exhibit No. 3. The mutilation on General Counsel's Exhibit No. 3 refers only to the elimination of the wage scale; and as General Counsel's Exhibit No. 4, a copy of an agreement dated December 17, 1948, to be effective to January 31, 1950, too.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 3 and 4 for identification.)

Trial Examiner Greenberg: That was dated December 17th of [52] 1948?

Mr. O'Brien: December 17, 1948, General Counsel's Exhibit No. 4, the document referred to in the complaint.

Q. (By Mr. O'Brien): Mr. Guyon, I show you General Counsel's Exhibit No. 3 for identification, and do you notice that certain portions have been cut off from it? Was that done in your office?

A. It appears to be.

Q. And on the second page a little square is cut out. Was that done in your office?

A. I don't recall that.

Q. You don't know?

A. Oh, yes, probably. I'll say probably.

Q. I don't know what is——

A. I know there was one copy of this that I clipped off in my office.

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: When you talk about the part that was cut off you are referring to the first page?

Mr. O'Brien: Part of the first page. Mr. Lund has assured me that he has a copy of the original document there in his file which he would like to submit. Is that right?

Mr. Lund: No. I would like to take your copy and conform it to the original by adding the names.

Mr. O'Brien: The signatures appear on General Counsel's Exhibit No. 3. Is that right? [53]

Mr. Lund: Yes. I am willing to stipulate to the foundation.

Mr. O'Brien: Thank you.

Q. (By Mr. O'Brien): Was this a document which you submitted to the National Labor Relations Board? A. I think so.

Q. Now, referring again to General Counsel's No. 3, you will note the names there of six different stores. Who negotiated that contract?

A. Which contract?

Q. General Counsel's No. 3.

A. Oh, I can remember about the last ones better than this one. This is 1947. However, they are all negotiated in recent years by more or less casual conversations in the beginning between representatives of the union and a store and another store, and with me and another store. You get out to one store and talk until it finally leads back to a point where the union and the stores come into agreement, and I would then draft the contract and

(Testimony of Frank R. Guyon.)

take it around to these members to sign it if they please—they didn't have to sign it if they didn't please—and that was probably made in the same fashion.

Q. This is General Counsel's Exhibit No. 4 which I am showing you now, and that is the contract of the 17th day of December, 1948. Was that signed in about the same way, sir? [54]

A. Well, I can remember the circumstances much more clearly on that.

Q. If you will give us the details of the signing of the contract of December 17th, which is General Counsel's Exhibit No. 4.

A. I would like to give a little background.

Q. If you would, sir.

A. The representative of the Amalgamated union, Mr. Glasman, mentioned on several occasions in the latter part of 1948 that some of the members of their union, employees of some of these stores, had been urging him to obtain an increase in wages for them, and so forth, on the new contract.

Trial Examiner Greenberg: You say he mentioned it to whom?

The Witness: To me. And he also stated to me that he had mentioned it at various stores where he was calling. It was all very casual in the beginning, and the old contract wasn't to expire until January 31st of the following year.

However, it developed that I would be obliged to go to a session of the State Legislature in January. We had a legislative representative, but that

(Testimony of Frank R. Guyon.)

year he was in bad physical condition and it made it necessary for me to be there much more frequently and more steadily, perhaps, than if he hadn't been in that condition.

So Mr. Glasman and I finally decided about the end of [55] November, somewhere along in there, that we would see if we couldn't get an agreement in shape prior not only to the January session but prior to the Christmas rush, two weeks before Christmas if possible, because at that time of the year the Southern California Merchants Association, of course, is many times busier than at any other season of the year; we add 200 per cent to our force, for example, of girls.

So I finally got some of the representatives of the stores in my office and told them that Mr. Glasman was in accord with me that if we could get this contract under way and finished before Christmas, it would be acceptable to him. So we had a little discussion there—the complaint of the members of the union, according to Mr. Glasman, was that the prevailing scales in Los Angeles which had been steadily rising, of course, were considerably above in many cases—and perhaps in most cases—than under the terms of the old contract.

So that I mentioned to whatever there were of these members present at this little meeting, and they asked me if I would try to gather data on the prevailing scales.

Trial Examiner Greenberg: Who asked you?

(Testimony of Frank R. Guyon.)

The Witness: Those members present at the meeting.

Trial Examiner Greenberg: Members of what?

The Witness: Well, I—everybody that I represent I speak of as members because the Southern California Merchants Association has about 100 stores, 90 to 100, and if there could [56] have been assumed an association called Credit Stores existed at that time then these people are also members of Credit Stores Association. The representative of the union was not present.

So I set about and did gather considerable data on the prevailing wage scales in retail stores, not just credit stores, but retail stores, and got some of those same persons at another meeting a few days later—I don't remember how long. In the meantime, I had drawn up on one of these contracts a translation of these scales I picked up, some of which were by the hour and some by the day. The contract here was——

Mr. Lund: I wonder if I might interrupt. I don't think we are interested in all the details of how the contract was set up so far as the figures and rates and so on are concerned. I think we are getting far afield.

Trial Examiner Greenberg: Well, I will ask the witness to confine himself to describing the way this contract was negotiated and signed.

The Witness: I have just reached that point. I just wanted to make the circumstances clear.

At the second meeting, the scales were consid-

(Testimony of Frank R. Guyon.)

ered and tentatively approved by each of those present.

Trial Examiner Greenberg: Who was present?

The Witness: Some of these firms, these firms on this [57] contract, their representative or owner was otherwise present.

Trial Examiner Greenberg: And who else?

The Witness: And me.

Trial Examiner Greenberg: The representative of the union was not present at the time?

The Witness: No, sir.

Trial Examiner Greenberg: And what did you decide on at that time, what wage scale you would offer to the union?

The Witness: That's about it.

Trial Examiner Greenberg: All right, sir.

The Witness: Now, that's what was done. I had a conference with Mr. Glasman and we went over it in detail and he finally accepted the list I had drawn up there opposite these prevailing rate scales. I went over that with him, too, and he expressed satisfaction with it and said it was O.K. with him.

I drew up a new contract and had mimeographed copies made of it.

I am quite sure I phoned all or part of these firms concerned and told them that Mr. Glasman said it would be acceptable to him and that I was mailing them—some of them were delivered, I suppose—copies of the proposed contract.

Trial Examiner Greenberg: Now, when you say

(Testimony of Frank R. Guyon.)

you had copies of the contract mimeographed——

The Witness: Yes, copies of the draft. [58]

Trial Examiner Greenberg: Who actually mimeographed it?

The Witness: The stenographer of the Southern California Merchants Association.

Trial Examiner Greenberg: In the office of the Southern California Merchants Association?

The Witness: Credit Stores Association never had an office.

Trial Examiner Greenberg: Was there any arrangement made—well, let me ask you this: Did the Credit Stores Association ever have a separate treasury?

The Witness: Treasury?

Trial Examiner Greenberg: Yes, money.

The Witness: Well, yes. They started out there—I wouldn't call it a treasury. They started out in the beginning to put \$5.00 a month into the treasury, as you call it, and it was used for some stamps and a few letterheads—we had 100 printed—and envelopes, never reprinted them.

Trial Examiner Greenberg: As I understand your testimony up to date now, I am trying to get clear just what this organization was or is.

The Credit Stores Association—just check me and see if I am correct—when it was formed consisted of a number of firms of retail credit stores who all belonged to the Southern California Merchants Association.

The Witness: That is right. [59]

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: And who formed a separate organization because, as distinguished from the rest of the members of the Southern Merchants Association, the members who comprised the Credit Stores Association carried on negotiations and had dealings with unions.

The Witness: The members did, yes, sir.

Trial Examiner Greenberg: Is that correct?

The Witness: Yes.

Trial Examiner Greenberg: Did you at all times act as the representative of the Credit Stores Association?

The Witness: Well, there was no function of the Credit Stores Association, even in the beginning, that I could represent them on. The only function——

Trial Examiner Greenberg: You just described some event, I take it, that happened in December of 1947?

The Witness: Yes.

Trial Examiner Greenberg: These negotiations with Mr. Glasman who represented the Amalgamated?

The Witness: Yes.

Trial Examiner Greenberg: Now, you did some talking to him, some negotiating with him, and you finally had a contract drawn up or submitted to him, didn't you?

The Witness: I am trying to distinguish between Association and individual members.

Trial Examiner Greenberg: You did that. All

(Testimony of Frank R. Guyon.)

of these negotiations and dealings with Mr. Glasman of the Amalgamated, [60] you didn't do that on your own behalf, did you?

The Witness: I did it on behalf of the individual firms who were at one time members of the Credit Stores Association.

Trial Examiner Greenberg. You did it on behalf of the signatories of this contract?

The Witness: That is right.

Trial Examiner Greenberg: Now, as for the conclusion that you have just stated you did it on their behalf as individuals rather than on their behalf as members of Credit Stores Association, that is merely your conclusion, that is the conclusion that you draw?

The Witness: So far as this contract is concerned, they——

Trial Examiner Greenberg: Well, I just wanted to get it for the record.

I am noting my awareness of the fact that the response to my last question constitutes a conclusion on the witness' part.

The Witness: Whatever answer I made wouldn't necessarily apply to both of these.

Mr. Rissman: When the witness says "both of these," may we have the documents identified?

Trial Examiner Greenberg: He pointed first to General Counsel's Exhibit 4 and then to General Counsel's Exhibit 3, [61] the two contracts in question.

(Testimony of Frank R. Guyon.)

The Witness: The circumstances are not the same in each one. They are quite different.

Trial Examiner Greenberg: I don't care to argue with you about them, sir. I am trying to clear up certain things in my mind. I want to know exactly what took place.

Those are all the questions I have. I am sorry to interrupt.

Q. (By Mr. O'Brien): Well now, again, this will start a new line of inquiry, sir, but we will put it in this way: Does Lee's customarily furnish to you evidence of the amount of business that it does in its store?

(No response.)

Q. (By Mr. O'Brien): It does not?

A. No, sir.

Q. And does Federal customarily furnish to you information as to the amount of business in its store? A. No.

Q. And the same would be true of Brown's, Golden State, Kay's and Star? A. Yes, sir.

Trial Examiner Greenberg: What was the response to the last question?

Mr. O'Brien: "Yes, sir."

Q. (By Mr. O'Brien): You do not customarily in your capacity [62] either as attorney or secretary negotiate, or in any capacity ordinarily get statements from your clients as to what business they are doing?

(Testimony of Frank R. Guyon.)

A. Not unless we request it?

Q. But if you do request it such information is furnished to you upon request?

A. Such as I have asked for, I guess has been furnished to me.

Q. And you recall, of course, making such a request in November of 1948?

A. About that time.

Q. At Mr. Taylor's request.

A. About that time.

Q. Mr. Taylor being the field examiner for the National Labor Relations Board?

A. Yes, I recall.

Q. Did Mr. Taylor tell you why he wanted that information?

A. Oh, yes, sir. He said he wanted commerce data. He specified what he wanted.

Mr. O'Brien: Mr. Reporter, will you mark this document for identification, please?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 5 for identification.)

Mr. O'Brien: I have had marked for identification as General Counsel's Exhibit No. 5, a copy of the petition in [63] Case No. 21-RC-56596, filed on October 27, 1948, naming the employer as Lee's Department Store and the Petitioning Union as Retail Clerks International Association of the A. F. of L.

Q. (By Mr. O'Brien): I show you General

(Testimony of Frank R. Guyon.)

Counsel's Exhibit No. 5 for identification, sir. I have already identified it very briefly, but was that the case in which you submitted this information to Mr. Taylor?

Mr. Lund: I am going to object, Mr. Examiner. I don't like to keep on objecting, but I can't see the materiality of any of this. Apparently the witness furnished information to the field examiner of the Board; it doesn't make any difference in what connection of the case.

Trial Examiner Greenberg: Overruled.

The Witness: Well, as I recall it, there were two separate cases affecting Lee's Department Store. I don't know.

Q. (By Mr. O'Brien): One was the union authorization case; this is a petition for representation, sir. Do you recall what disposition was made of that case?

Mr. Lund: I object to that on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Greenberg: Sustained.

Mr. Gilbert: May I have the question back?

Trial Examiner Greenberg: The question was "Do you recall what disposition was made of that case." [64]

Q. (By Mr. O'Brien): Did you represent Lee's Department store in that proceeding, the representation case?

A. That's the first of the two cases?

Q. That is right, sir.

(Testimony of Frank R. Guyon.)

A. Well, I will have to have you define what you mean by "represent."

Q. Did you appear before Mr. Taylor at a conference? A. I appeared, yes, sir.

Q. Did you make statements on behalf of Lee's Department Store?

A. I answered whatever questions I think that Mr. Taylor had, and some that Mr. Gilbert asked.

Q. And did you subsequently get a letter from Mr. Taylor saying that the case was dismissed?

Mr. Lund: Wait a minute. He is asking the same question the Examiner sustained my objection on a little earlier.

Trial Examiner Greenberg: I will overrule that objection there. I will allow the answer to that. I think it is material only insofar as it goes to whether or not this witness received any communication in connection with the disposition of the case in connection with the proceedings, as a representative of Lee's Department Store.

The Witness: I probably saw a copy of that, but I know one never came to my office to me, nor to the Credit Stores Association. [65]

Q. (By Mr. O'Brien): None came to you, nor to your office. Is that right, sir?

A. To the best of my recollection.

Mr. O'Brien: Then I will have to ask Mr. Lund to ask his client to produce a copy of the letter of dismissal.

Mr. Lund: I assume you have it in your file.

(Testimony of Frank R. Guyon.)

Mr. O'Brien: I have a copy, but I don't have a good one.

Mr. Lund: Mine doesn't show a copy to Mr. Guyon.

Mr. O'Brien: May I see it, sir?

Maybe we can stipulate the second paragraph of this letter.

Mr. Lund: No. It is immaterial in this proceeding.

Mr. O'Brien: You say it is immaterial.

Mr. Examiner: I think the remainder of our commerce information can be better elicited through Mr. Gisser who is here from San Francisco, and Mr. Keen whose office is, fortunately, in Los Angeles. I think we have fairly well exhausted this witness' recollection.

Could we go off the record here and decide what we can do this afternoon?

Trial Examiner Greenberg: Off the record.

(Discussion off the record.)

Trial Examiner Greenberg: On the record.

Q. (By Mr. O'Brien): Mr. Guyon, I show you a letter [66] which I am having identified as General Counsel's Exhibit 6, dated February 28, 1950, showing purchases and percentages of out-of-state of Star Stores, Kay's Department Store, Brown's Golden State Department Store.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

(Testimony of Frank R. Guyon.)

Q. (By Mr. O'Brien): Was that information furnished to you at your request?

A. It was.

Q. And you believe it to be true?

A. I haven't any idea.

Q. You just don't know, but it was furnished?

A. I asked for certain information and I got it. I didn't ask anybody to swear to it. I don't know if it is true or not.

Mr. O'Brien: Then I suggest a stipulation among all the parties that the information contained in Mr. Guyon's letter, which is General Counsel's Exhibit No. 6, is true.

Mr. Lund: We will so stipulate, with the reservation, however, that we object to the materiality and competency of the evidence. We stipulate to the facts. With that objection we don't think the stipulation should be received because the evidence is incompetent, irrelevant and immaterial.

Mr. Ladar: Same stipulation and objection.

Trial Examiner Greenberg: Other counsel? [67]

Mr. Rissman: No objection.

Mr. Gilbert: No objection.

Trial Examiner Greenberg: Do you stipulate?

Mr. O'Brien: I will stipulate that the matter contained therein is substantially true. Of course, I believe they are material and relevant.

Trial Examiner Greenberg: The stipulation is received. I take it, then, there is no objection to the receipt in evidence of General Counsel's Exhibit No. 6, subject to the objection stated by counsel for the two employers in this case.

(Testimony of Frank R. Guyon.)

Mr. Lund: I don't know that the letter adds anything.

Trial Examiner Greenberg: I will receive General Counsel's Exhibit 6 and thereby overrule the objection as to the materiality.

(The document heretofore marked General Counsel's Exhibit No. 6 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 6

Frank R. Guyon
Attorney at Law
Suite 511 Lincoln Building
Los Angeles
Trinity 4177

February 28, 1950.

National Labor Relations Board,
111 West 7th St.,
Los Angeles, 14, Calif.

Attn: Mr. Cherry
Case No. 21-CA-420 and
No. 21-CA-481.

Gentlemen:

In accordance with your request I have obtained the following approximate estimates from the firms listed below:

(Testimony of Frank R. Guyon.)

	Total Purchases in 1949	% of Total From Out of California
Star Stores	\$400,000	18%
Kay's Dept.	725,000	28%
Brown's	404,000	15%
Golden State Dept.	225,000	33%

Very truly yours,

/s/ F. R. GUYON.

FRG/h

Received March 1, 1950.

Mr. Lund: I wish the Trial Examiner would say in overruling our objection you are not making a predetermination on this vital point.

Trial Examiner Greenberg: I don't feel called upon to make that announcement, sir, because by receiving a portion of the data which the General Counsel is offering on the question of commerce, I can't conceive of myself giving any indication of predetermining that issue. I can assure you that I have an entirely open mind on the question of the jurisdictional issue here and am open to conviction on either side. [68]

Mr. O'Brien: Before we adjourn for lunch and before I forget, I would like to offer General Counsel's Exhibits 2, 3, 4 and 5 in evidence.

Mr. Lund: Wait until we see—what is 2?

Trial Examiner Greenberg: No 2 is the bylaws; 3 and 4 the agreements, 5 the copy of the petition in the RC case—

(Testimony of Frank R. Guyon.)

Mr. Lund: No. 5, the petition in the RC case, we strenuously object to it as not being relevant in this case. Respondent Lee's has no objection to General Counsel's 3 and 4.

Trial Examiner Greenberg: 2, 3 and 4, did you say?

Mr. Lund: 3 and 4. I object to No. 2 only on this ground; I happen to know, George, of at least one inaccuracy in the document. If it purports to be the bylaws, subject to our being able to correct that inaccuracy, I don't object.

Mr. O'Brien: I would be very happy if you would.

Mr. Lund: Do you want to admit it as far as you can admit it, subject to that correction?

Trial Examiner Greenberg: Do you have any objection to its receipt?

Mr. Ladar: I join in the objection just made.

Mr. Rissman: No objection.

Mr. Gilbert. None.

Trial Examiner Greenberg: Then General Counsel's Exhibits 2, 3 and 4 are received in evidence, and subject to [69] the reservations on that, as made by counsel of the two respondents to correct an asserted inaccuracy in General Counsel's Exhibit No. 2; is that correct?

Mr. Lund: That is correct.

(The documents heretofore marked General Counsel's Exhibits Nos. 2, 3 and 4 for identification were received in evidence.)

(Testimony of Frank R. Guyon.)

GENERAL COUNSEL'S EXHIBIT No. 2

By-Laws of the
Credit Stores Association

The name of the Association shall be Credit Stores Association.

It shall be a non-profit Association.

Article I.

The purposes for which the Association is formed are:

(a) To promote and protect the welfare and interest of retail installment merchants;

(b) To maintain among its members a standard of ethics which will elevate retail installment firms in the eyes of the public;

(c) To promote friendly relations between member firms and their employees;

(d) To aid members in the adjustment of disputes with Labor Unions;

(e) To insure cooperation and collective bargaining of members with Labor Unions when necessary to protect any member or members from strikes or other harassment by Unions;

(f) To promote friendly cooperation in all matters of importance to its members.

Article V.

Power of Directors

The Directors shall have the power:

1st. To conduct, manage and control the affairs

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 2—(Continued)
and business of the Association, and to make rules and regulations, not inconsistent with these By-Laws, for the guidance and management of the affairs of the Association.

2nd. To assess members for funds required for the conduct of the business of the Association.

3rd. To make all contracts which are proper and necessary to carry on the business of the Association. Any action of the Board of Directors is subject to review, instruction, alteration, amendment or repeal by a two-thirds vote of all the members of this Association.

4th. To call special meetings of the Association when they deem it necessary. And they shall call a special meeting upon the written request, stating the reason for such meeting, of at least five members who are in good standing.

5th. To appoint and remove, at pleasure, all agents and employees of the Association, prescribe their duties, fix their compensation, and require of them securities for faithful service.

6th. To decide all questions arising as to interpretation of any agreement made with the Labor Unions, to which the Association and its members are parties, and to enforce the performance by members of their obligations under such agreements, when such enforcement does not conflict with a decision by a Joint Committee of representatives of the Association and of Unions.

The decision of a majority of the Board of Di-

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 2—(Continued)

rectors on such matters shall be binding upon all members, except that within three days after notice of such a decision, any member or members concerned in the decision may, upon written notice to the Board of Directors, appeal such decision to the members-at-large at a special meeting called for that purpose. The decision of a majority of a quorum of members present at such a meeting shall be final and binding as to the question involved.

Any member failing to fulfill all of his obligations with respect to any agreement made with the Labor Unions and to which such member and the Association are parties, and in accordance with the interpretation of such agreements by the Board of Directors of the Association, or by the vote of the members at a special meeting as aforesaid, shall be subject to immediate expulsion from the Association by vote of a majority of the Board of Directors. Upon such expulsion, the Labor Unions concerned shall be promptly notified by the Association of the expulsion.

7th. The Board shall have the power to call any member before it for questioning on matters pertaining to Union agreements referred to in paragraph 6, or on any business pertaining to the Association, and it shall be compulsory for such member to be present at the time and place designated by the Board, and to answer all questions and inquiries and make explanation concerning the business for which said member was summoned.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 2—(Continued)

Article XI.

Membership

Membership in this Association shall be limited to firms doing a retail credit business in Los Angeles County and any such firm, as a condition to becoming a member of the Association, shall be required to sign, and thereby become a party to, the agreement of August 27, 1937, and any subsequent agreements made between the Credit Stores Association and/or its members on the one hand, and Labor Unions on the other hand.

Applications for membership must be in writing from applying firm, designating the person in its organization who shall represent said firm in the Association and accompanied by check for the entrance fee.

Upon election to membership, the member shall sign the By-Laws.

The vote of a member or in his absence, the vote of a person duly authorized by proxy from member firm to act in place of said member, shall be binding on the member firm so represented.

Membership in this Association cannot be transferred or assigned, except by vote of the Board of Directors such membership certificate may be transferred, and the transferee made a member in lieu of the last former holder.

Received November 30, 1948.

(Testimony of Frank R. Guyon.)

GENERAL COUNSEL'S EXHIBIT No. 3

Agreement

This Agreement made and entered into this 31st day of January, 1947, by and between signatory members of Credit Stores Association (said members being hereinafter referred to as Employers) as parties of the First Part and Amalgamated Clothing Workers of America, Local Union No. 81, affiliated with Congress of Industrial Organizations, party of the Second Part, hereinafter referred to as the Union, all parties being located in the County of Los Angeles, in the State of California:

Witnesseth:

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

Article I.

Recognition

The undersigned Employers shall recognize the Amalgamated Clothing Workers of America, Local Union No. 81, as the sole collective bargaining agency for all of their employees and shall negotiate with the accredited representatives thereof in that capacity.

Article II.

Salary and Commission Guarantees

Retroactively effective beginning Oct. 1, 1946.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)

Alteration Department Employees

Per Hour

Fitters, markers, bushelmen, pressers (male)

Female finishers on men's garments

Alteration workers, women's garments

*[Note: Portion of page containing hourly rates cut out.]

Minimum Wages

No employee in any of the classifications covered by this agreement shall be paid less than a minimum wage of sixty cents per hour.

Classification of work

The nature of the work occupying the majority of the time of any employee shall determine the classification of work and the wage scale applicable to such employee.

Article III.

Working Hours and Overtime Pay

On January 1, 1947, all of the following conditions shall also become effective:

1. The above minimum salary and commission guarantees shall apply to a work week of forty-four hours. If an employee works more than forty-four hours during any week, by mutual consent of employer and employee, he shall receive extra pay for the extra time worked, at the rate of time and one-half.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)

2. On one day only each week, male employees may be worked more than eight hours but not to exceed 11 hours, without payment of the overtime rate, provided that the time worked in excess of 8 hours on that day shall be offset by giving a corresponding amount of time off on some other day or days during the same week. Each work day shall be continuous except for normal meal periods.

3. However, except during a period of one week immediately preceding Easter and of two weeks immediately preceding Christmas, each employee shall be entitled to time off each week, during one morning or one afternoon, for four consecutive hours not including his own normal meal hours.

4. During the one week preceding Easter and the two weeks preceding Christmas, male employees may be worked 52 hours per week, but work in excess of 44 hours per week during those weeks shall be paid for at the rate of time and one-half.

5. Transactions with customers taking place at the normal closing time of the particular Employer's store shall be completed by such employees as are actually necessary for the purpose, without pay for such extra time, up to 30 minutes only.

6. Overtime work for the sole purpose of taking inventory at customary periods, shall be compensated by time off instead of by salary. This time off shall be within the next sixty days after such

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)
work is performed, the date to be selected by the employer except that it must be for consecutive hours and in the day time. The length of time off shall be one and one-half times as much as the hours worked by the employee on the inventory. The employer shall notify the employee three days in advance of the days designated for such time off.

7. All work done on Sundays and on the following legal holidays shall be paid for at the rate of time and one-half: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. When an employee does not work on a recognized legal holiday, he shall nevertheless be paid for such holiday on the basis of an 8-hour day at straight time, except when such holiday falls on a Sunday.

Article IV.

Guarantees Defined

The guarantees specified in Article II represent the total compensations employers agree to pay to their respective employees in the form of salaries or commissions or a combination of salaries and commissions.

Any compensation not customarily designated by the employer as salary or wages, but which is paid on All merchandise of any particular classification sold by a salesperson, shall be considered as a com-

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)
mission whether paid on a percentage basis, or by specified sums of money.

The employer may, at his option, grant P.M.s, "Spiffs," bonuses or other forms of extra compensations, which shall not be considered as commissions as defined above.

Where an employee's total earnings in a month are in excess of his salary and commission guarantee, deductions for absence from his work may be made from such total earnings, but shall be a proportionate amount of guaranteed earnings only.

Article V.

Membership in Union

1. Members of the Employers' families, store managers, one head bookkeeper, one stenographer-secretary, and bona fide department heads who have the duty of directing the work of two or more employees in their respective departments, shall not be subject to the jurisdiction of the Union and shall be excepted from all provisions of this agreement.

2. Subject to the exceptions specified in paragraph 1 of this Article, all full-time employees at present employed in the classifications specified in Article II shall become members of the signatory Union within fifteen (15) days after the effective date of this agreement or shall be discharged by the Employer.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)

3. Subject to the exceptions specified in paragraph 1 of this Article, all full-time employees in the classifications specified in Article II and who are hired after the effective date of this agreement shall become members of the signatory Union within 30 days after the date of their employment or shall be discharged by the Employer.

Article VI.

Apprentices

1. An apprentice is a person with less than one year's experience in the classification of work for which he is employed. Each employer shall give apprentices credit for any apprenticeship time served with previous employers in the particular classification of work for which they are hired.

2. Only one haberdashery apprentice shall be employed for each five clothing salesmen and haberdashery salesmen combined, except that where less than five of such salesmen are employed one haberdashery apprentice may nevertheless be employed.

3. In all other classifications, one apprentice may be employed for each five journeymen in a particular classification, except that where less than five journeymen are employed in any classification one apprentice may nevertheless be employed.

4. Where there is an apprentice haberdasher employed, the next person employed in the clothing or haberdashery department shall be a clothing

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)

salesman and thereafter haberdashery and clothing salesmen shall be alternately employed until there are six of such salesmen, at which time an additional haberdashery apprentice may be Employed; except, where it is mutually agreed between an Employer and the Union that a different proportion is necessary for the conduct of the particular business of that Employer. Haberdashery salesmen and apprentices may sell men's clothing when all of the regular clothing salesmen are busy or off the floor.

Article VII.

Payment of Compensation

1. Salaries shall be paid once every week or twice each month, on a designated day.

2. Commissions and P.M.s, if any, earned by salespeople of any classification, shall be computed and paid within one week after the end of each month, for such month, and no deductions shall be made from such commissions and P.M.s to apply against regular salaries payable during preceding or subsequent months.

3. Compensation in excess of guaranteed scales shall not be applied to the payment of wages for overtime, nor shall time off be given to an employee in lieu of overtime pay except as provided in paragraph six of Article III.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)

Article VIII.

Vacations

Each year, all employees who have been in the employ of the same Employer for a period of one year or more, computed during the normal vacation season, shall receive one week's vacation with pay during that season; and those who have been in the employ of the same Employer for less than one year and for more than six months, computed during the normal vacation season, shall receive three days' vacation with pay during that season.

Any employee who has qualified for a vacation but is discharged during the normal vacation season and prior to receiving his vacation, shall receive his vacation pay. The normal vacation season shall be considered as June, July, and August of each year, unless otherwise designated by the Employer.

Article IX.

Modification Option

In the event that the Union should make another agreement, with any employer, either before or after signing this agreement, containing any wage scales, working hours or conditions more favorable to such employer than wage scales, working hours or conditions contained herein and applicable to the same classifications of employees, the signatory Employers may, at their option, require the

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)
Union to immediately modify this agreement to conform with such more favorable wage scales, working hours and/or conditions.

Article X.

Arbitration

It is agreed by the parties hereto that all misunderstandings, disputes, claims or questions arising between the Employers and the Union shall be determined by the terms of this agreement. It is further agreed that any differences of opinion between the parties as to the interpretation and effect of this agreement which cannot be reconciled by discussions between the parties or their authorized representatives, shall be submitted to a board of arbitration consisting of an equal number of persons representing the Employers and the Union, respectively, and those persons in turn shall select an impartial chairman acceptable to both parties to the controversy, with the understanding that his decision on all questions at issue shall be final and binding upon the parties concerned.

In the event that representatives of the Employers and the Union should at any time fail to agree upon the selection of an impartial chairman, the Superior Court of Los Angeles County shall be requested by either party to the controversy to appoint such a chairman and the parties agree to accept such appointment, sharing equally the expense of the compensation of such chairman.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)

It is further agreed that prior to and during negotiations or arbitrations there shall be no lock-outs by Employers, nor strikes, walk-outs nor picketing of the Employers with the sanction of the Union and the Union undertakes specifically to prevent strikes, walk-outs or picketing on the part of members of the Union.

Article XI.

Individual Responsibility

It is understood that this agreement is executed by the Employers severally, that no signatory Employer shall be liable for any breach of this agreement by any other Employer and that no default or breach by any Employer shall constitute a default or breach by any other Employer.

Article XII.

Duration of Agreement

This agreement shall become effective on the 31st day of January, 1947, and shall continue until the 31st day of January, 1949; except, upon written request by either of the parties hereto to the other, not less than thirty days prior to January 31, 1948, the parties hereto shall negotiate during the month of January, 1948, with respect to adjustments of wages and hours for the period from February 1, 1948, to January 31, 1949, and with

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 3—(Continued)
respect to extending the duration of this agree-
ment to January 31, 1950.

MEMBERS OF CREDIT STORES ASSOCIA-
TION

BROWN'S,

By CHARLES BROWN.

STAR OUTFITTING CO.,

By H. N. MOORE.

FEDERAL STORES,

By SIG. GOLDSTEIN.

GOLDEN STATE DEPT.
STORE,

By S. KRANTZ.

KAYS DEPARTMENT
STORES,

By ROBERT ROSENSON,

LEE'S DEPT. STORE,

By W. L. KEEN.

AMALGAMATED CLOTHING WORKERS OF
AMERICA, LOCAL UNION No. 81, Affiliated
With Congress of Industrial Organizations

By A. S. GLASMAN,
District Representative.

(Testimony of Frank R. Guyon.)

GENERAL COUNSEL'S EXHIBIT No. 4

Agreement

This Agreement made and entered into this 17th day of December, 1948, by and between signatory members of Credit Stores Association (said members being hereinafter referred to as Employers) as parties of the First Part and Amalgamated Clothing Workers of America, Local Union No. 81, affiliated with Congress of Industrial Organizations, party of the Second Part, hereinafter referred to as the Union, all parties being located in the County of Los Angeles, in the State of California:

Witnesseth:

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

Article I.

Recognition

The undersigned Employers shall recognize the Amalgamated Clothing Workers of America, Local Union No. 81, as the sole collective bargaining agency for all of their employees and shall negotiate with the accredited representatives thereof in that capacity.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)

Article II.

Total Minimum Compensation Guaranteed
(See Article IV.)

Effective Beginning Feb. 1, 1949

	Experienced Per Month	Apprentices Per Month
Men's Clothing Salesmen		
1 years experience	\$250.00	
Haberdashery Salesmen		
After 1 years experience.....	200.00	
Apprentice		\$175.00
Shoe Salesmen	200.00	
Salesmen, Furniture and Major Appliances	250.00	
Salesmen, Small Appliances and Miscellaneous	150.00	
Salesladies, Coats and Suits.....	160.00	
Salesladies, All Other Merchandise.....	140.00	
Collectors and Tracers		
After 2 years experience.....	235.00	
After 1 years experience.....	200.00	
Apprentice		175.00
Application Takers and Miscellaneous Credit and Collection Office Clerks		
After 1 years experience.....	160.00	
Apprentice		135.00
Verifiers		
After 1 years experience.....	160.00	
Apprentice		135.00
Office Clerks, Except Credit and Collection Dept.	145.00	
Office Clerks, Apprentice, Except Credit and Collection Dept., for One Year....		130.00
Alteration Department Employees		
Fitters, Markers, Bushelmen, Pressers (Male).....	\$1.50 per hour	
Female Finishers on Men's Garments.....	1.00 per hour	
Alteration Workers, Women's Garments.....	.90 per hour	

Classification of Work

The nature of the work occupying the majority of the time of any employee shall determine the

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)
classification of work and the compensation applicable to such employees.

Article III.

Working Hours and Overtime Pay

1. Overtime Work

If an employee works more than forty-four hours during any week, by mutual consent of employer and employee, he shall receive extra pay for the extra time worked, at the rate of time and one-half.

2. Division of Hours

On one day only each week, male employees may be worked more than eight hours but not to exceed 11 hours, without payment of the overtime rate, provided that the time worked in excess of 8 hours on that day shall be offset by giving a corresponding amount of time off on some other day or days during the same week. Each work day shall be continuous except for normal meal periods.

3. Time Off

However, except during a period of one week immediately preceding Easter and of two weeks immediately preceding Christmas, each employee shall be entitled to time off each week, during one morning or one afternoon, for four consecutive hours not including his own normal meal hours.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)

4. Holiday Season Hours

During the one week preceding Easter and the two weeks preceding Christmas, male employees may be worked 52 hours per week, but work in excess of 44 hours per week during those weeks shall be paid for at the rate of time and one-half.

5. Completing Transactions

Transactions with customers taking place at the normal closing time of the particular Employer's store shall be completed by such employees as are actually necessary for the purpose, without pay for such extra time, up to 30 minutes only.

6. Inventory Work

Overtime work for the sole purpose of taking inventory at customary periods, shall be compensated by time off instead of by salary. This time shall be within the next sixty days after such work is performed, the date to be selected by the employer except that it must be for consecutive hours and in the day time. The length of time off shall be one and one-half times as much as the hours worked by the employee on the inventory. The employer shall notify the employee three days in advance of the days designated for such time off.

7. Sunday and Holiday Work

All work done on Sundays and on the following legal holidays shall be paid for at the rate of time and one-half: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)
Christmas Day. When an employee does not work on a recognized legal holiday, he shall nevertheless be paid for such holiday on the basis of an 8-hour day at straight time, except when such holiday falls on a Sunday.

Article IV.

Minimum Compensation Guarantees Defined

The guarantees specified in Article II represent the total minimum compensations employers agree to pay to their respective employees in the form of salaries or commissions or a combination of salaries and commissions.

Any compensation not customarily designated by the employer as salary or wages, but which is paid on All merchandise of any particular classification sold by a salesperson, shall be considered as a commission whether paid on a percentage basis, or by specified sums of money.

The employer may, at his option, grant P.M.s, "spiffs," bonuses or other forms of rewards, which shall not be considered as part of guaranteed minimum compensations defined above.

Where an employee's total earnings in a month are in excess of his salary and commission guarantee, deductions for absence from his work may be made from such total earnings, but shall be a proportionate amount of guaranteed earnings only.

Article V.

Membership in Union

1. Members of the Employers' families, store

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)

managers, one head bookkeeper, one stenographer-secretary, and bona fide department heads who have the duty of directing the work of two or more employees in their respective departments, shall not be subject to the jurisdiction of the Union and shall be excepted from all provisions of this agreement.

2. Subject to the exceptions specified in paragraph 1 of this Article, all full-time employees at present employed in the classifications specified in Article II shall become members of the signatory Union within fifteen (15) days after the effective date of this agreement or shall be discharged by the Employer.

3. Subject to the exceptions specified in paragraph 1 of this Article, all full-time employees in the classifications specified in Article II and who are hired after the effective date of this agreement shall become members of the signatory Union within 30 days after the date of their employment or shall be discharged by the Employer.

Article VI.

Apprentices

1. An apprentice is a person with less than one year's experience in the classification of work for which he is employed. Each employer shall give apprentices credit for any apprenticeship time served with previous employers in the particular classification of work for which they are hired.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)

2. Only one haberdashery apprentice shall be employed for each five clothing salesmen and haberdashery salesmen combined, except that where less than five of such salesmen are employed one haberdashery apprentice may nevertheless be employed.

3. In all other classifications, one apprentice may be employed for each five journeymen in a particular classification, except that where less than five journeymen are employed in any classification one apprentice may nevertheless be employed.

4. Where there is an apprentice haberdasher employed, the next person employed in the clothing or haberdashery department shall be a clothing salesman and thereafter haberdashery and clothing salesmen shall be alternately employed until there are six of such salesmen, at which time an additional haberdashery apprentice may be employed; except, where it is mutually agreed between an Employer and the Union that a different proportion is necessary for the conduct of the particular business of that Employer. Haberdashery salesmen and apprentices may sell men's clothing when all of the regular clothing salesmen are busy or off the floor.

Article VII.

Payment of Compensation

1. Salaries shall be paid once every week or twice each month, on a designated day.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)

2. Commissions and P.M.s, if any, earned by salespeople of any classification, shall be computed and paid within one week after the end of each month, for such month, and no deductions shall be made from such commissions and P.M.s to apply against regular salaries payable during preceding or subsequent months.

3. Compensation in excess of guaranteed scales shall not be applied to the payment of wages for overtime, nor shall time off be given to an employee in lieu of overtime pay except as provided in paragraph six of Article III.

Article VIII.

Vacations

Each year, all employees who have been in the employ of the same Employer for a period of one year or more, computed during the normal vacation season, shall receive one week's vacation with pay during that season; and those who have been in the employ of the same Employer for less than one year and for more than six months, computed during the normal vacation season, shall receive three days' vacation with pay during that season.

Any employee who has qualified for a vacation but is discharged during the normal vacation season and prior to receiving his vacation, shall receive his vacation pay. The normal vacation season shall be

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)
considered as June, July, and August of each year,
unless otherwise designated by the Employer.

Article IX.

Modification Option

In the event that the Union should make another agreement, with any employer, either before or after signing this agreement, containing any wage scales, working hours or conditions more favorable to such employer than wage scales, working hours or conditions contained herein and applicable to the same classifications of employees, the signatory Employers may, at their option, require the Union to immediately modify this agreement to conform with such more favorable wage scales, working hours and/or conditions.

Article X.

Arbitration

It is agreed by the parties hereto that all misunderstandings, disputes, claims or questions arising between the Employers and the Union shall be determined by the terms of this agreement. It is further agreed that any differences of opinion between the parties as to the interpretation and effect of this agreement which cannot be reconciled by discussions between the parties or their authorized representatives, shall be submitted to a board of arbitration consisting of an equal number of per-

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)

sons representing the Employers and the Union, respectively, and those persons in turn shall select an impartial chairman acceptable to both parties to the controversy, with the understanding that his decision on all questions at issue shall be final and binding upon the parties concerned.

In the event that representatives of the Employers and the Union should at any time fail to agree upon the selection of an impartial chairman, the Superior Court of Los Angeles County shall be requested by either party to the controversy to appoint such a chairman and the parties agree to accept such appointment, sharing equally the expense of the compensation of such chairman.

It is further agreed that prior to and during negotiations or arbitrations there shall be no lock-outs by Employers, nor strikes, walk-outs nor picketing of the Employers with the sanction of the Union and the Union undertakes specifically to prevent strikes, walk-outs or picketing on the part of members of the Union.

Article XI.

Individual Responsibility

It is understood that this agreement is executed by the Employers severally, that no signatory Employer shall be liable for any breach of this agreement by any other Employer and that no default or breach by any Employer shall constitute a default or breach by any other Employer.

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)

Article XII.

Duration of Agreement

This agreement shall become effective on the 1st day of February, 1949, and shall continue until the 31st day of January, 1951; except, upon written request by either of the parties hereto to the other, not less than sixty days prior to January 31, 1950, the parties hereto shall negotiate during the month of January, 1950, with respect to adjustments of wages and hours for the period from February 1, 1950, to January 31, 1951, and with respect to extending the duration of this agreement to January 31, 1952.

MEMBERS OF CREDIT STORES ASSOCIATION

STAR OUTFITTING CO.,

By H. N. MOORE,
President.

FEDERAL STORES,

By SIG. GOLDSTEIN.

GOLDEN STATE DEPT.
STORE,

By S. KRANTZ.

KAYS DEPT. STORE,

By ROBERT ROSENSON,

(Testimony of Frank R. Guyon.)

General Counsel's Exhibit No. 4—(Continued)

LEE'S DEPT. STORE,

By W. L. KEEN.

BROWNS,

By CHARLES BROWN.

AMALGAMATED CLOTHING WORKERS OF
AMERICA, LOCAL UNION No. 81, Affiliated
With Congress of Industrial Organizations,

By A. S. GLASMAN,

District Representative.

Trial Examiner Greenberg: Now, that leaves General Counsel's Exhibit 5. I ask Mr. O'Brien for what purpose he would offer it. What is the materiality.

Mr. O'Brien: The next thing that will come in through another witness is the disposition of the case. I found I did not have a competent witness on the stand.

Trial Examiner Greenberg: Do you want to have your offer remain pending?

Mr. O'Brien: My offer may remain pending.

Mr. Gilbert: Do I understand, Mr. Examiner, that Mr. Guyon has merely been withdrawn from the stand temporarily because of the difficulties of postponement, and that he will be available for additional examination?

Trial Examiner Greenberg: I don't know what Mr. O'Brien's intentions are in that respect.

Mr. O'Brien: I intend to call Mr. Guyon for a few more questions tomorrow morning, depending on the convenience of counsel.

Trial Examiner Greenberg: Mr. Guyon will be available to [70] testify further. [71]

* * *

Trial Examiner Greenberg: The hearing will be in order.

Mr. Lund: I want to make a motion at this time, Mr. Examiner.

Trial Examiner Greenberg: Yes, sir.

Mr. Lund: I want to renew the third motion I made yesterday, the motion to strike Paragraph 9 of the Complaint, and renew it because we received in this morning's mail a copy of the latest issue of the Labor Relations Reporter dated March 6, 1950, Volume 25, No. 35.

At page 1391 thereof, you see the recent decision in the case of Salant and Salant, Inc., No. 15NC3, 88 NLRB 156, decided February 27, 1950.

I think it is a decision squarely in point along the lines of the argument which I made yesterday in referring to this check-off violation, that Section 302 of the Taft-Hartley Act has no bearing, meaning or significance so far as unfair labor practices are concerned, and the Board explicitly so states.

Consequently, in this case the Board holds that where the so-called illegal assistance to a union in violation of 8 (a) (2) consists of the adoption of a

union security provision which is invalid because of lack of the necessary authorizations, the check-off is not an additional illegal assistance under those circumstances, and does not form the [139] basis of any unfair labor practice.

On the basis of this decision, which is squarely in point, we submit that Paragraph 9 of the Complaint relative to the check-off should now be ordered stricken.

Mr. Gilbert: May we have that citation again?

Mr. Lund: Salant and Salant, Inc., 88 NLRB 156, 25 Labor Relations Manual, 1391.

Mr. O'Brien: Mr. Examiner, I am familiar with this Salant and Salant case from a long time back, and I see no reason to change my argument on it at all; that this particular provision of the Complaint to which Mr. Lund seemed to object is only a further particularization of the allegation of support to the Amalgamated.

Mr. Lund: This whole case makes the point that it is not an illegal setup where the check-off provision is illegal only by reason of the union security provision.

Trial Examiner Greenberg: I don't think we ought to argue the point at great length. You have made your positions clear. I shall content myself with saying that I wish to read Paragraph 9 of the Complaint, to which your motion addressed to Section 302 of the Act as Amended went, again and see if there is anything, any necessary interpretation in that paragraph which would lead to the necessity of

depending upon Section 302 as support for the allegation of illegality of the check-off. [140]

Mr. Lund: You only understand half of it. I mean, the other half is—and this case so holds, while I am not going to quote directly from the decision which Mr. Gilbert is looking at—the Board says that the check-off is not illegal under the National Labor Relations Act, only where it is illegal assistance to a company-dominated union.

And the Board goes on to say where the so-called assistance, or the union which is company-dominated assistance, or the union which is company-dominated, was assisted by virtue of an illegal union shop violation of the Act and, therefore, no averment of unfair labor practice can be based upon any allegations of check-off, because they said the only illegality is in the union security provision. The check-off, which is perfectly valid if the union security provision is valid, does not constitute an independent violation.

I want to take time to read just about two sentences in that case:

“As already indicated there is nothing in the nature of a check-off agreement which is per se illegal in violation of Section 8. In fact, we have generally held in all of these situations, where it was connected with an organization that was company dominated, the practices are alleged to be the practices of company-dominated unions or who for some other reason do not represent an uncoerced majority of the employees. [141]

“In the instant case we find that respondent coerced its employees in violation of 8 (a) (1) and has given assistance and support to the A. F. of L. in violation of 8 (a) (1) solely through its renewal and continuance thereafter of the illegal union security clause in its contract with the A. F. of L.”

That is exactly the situation here. The only illegality charged against us insofar as the C.I.O. is concerned is the continuance of that illegal provision in the contract.

The Board concludes:

“We find therefore that the respondent is charged under Section 8 (a) (1) and 8 (a) (2), is alleged to have violated the Act by the renewal and continuance thereof on and after September, 1947.”

In other words, the check-off under the Wagner Act is legal and it only becomes subject to complaint when it is in aid of a company-dominated union or an illegally assisted union. And the Board in this particular case goes on to hold along the lines of the argument I made yesterday where the illegal assistance consists only of a union security provision, that the check-off is not an additional violation because if the union security provision is valid the check-off would be valid.

Trial Examiner Greenberg: I will reserve ruling on the renewal of your motion and will pass upon it in my intermediate [142] report.

Mr. Ladar: I join in the motion and the renewal

of it as I did yesterday. I think he is 100 per cent correct in the point he is making, and we would like to have the same motion.

Trial Examiner Greenberg: Same ruling.

Mr. O'Brien: Before I recall the witness, Mr. Lund has handed me this morning a correction, an extra page for one of the Board's Exhibits. May I have the exhibits?

Mr. Lund: It is No. 2, George.

Mr. O'Brien: I suggest that this document be marked as General Counsel's 2-B, and I request that General Counsel's Exhibit 2-B be received in evidence as a substitute for page 3 of General Counsel's Exhibit 2.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2-B for identification.)

Mr. O'Brien: Before that I would like the privilege of showing this comparison to the witness presently on the stand.

FRANK R. GUYON

a witness called by and on behalf of the General Counsel, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. O'Brien:

Q. I show you this, General Counsel's 2-B.

A. That looks more familiar to me than this did

(Testimony of Frank R. Guyon.)

yesterday. [143] I was very much astonished when I read this yesterday, because I thought of one thing——

Q. By this, you mean page 3 of No. 2?

A. Yes, that one of the strongest indications in my mind that the Credit Stores Association, as such, ceased to exist was because in my mind it was yesterday, but after reading this over I didn't want to say it that way, I mean that it was predicated on a bylaw provision that said that the condition of membership such as it is stated here now was——

Q. Referring now to General Counsel's Exhibit 2-B?

A. Yes. Our condition of membership was not only that they should become parties to an agreement dated August 27, 1937, as I read to you yesterday, but went further, made between Credit Stores Association and its members on the one hand and Los Angeles Central Labor Council of the American Federation of Labor and various local unions under the jurisdiction of that council on the other hand. Those were the—that was the unions—or members of this association were required to sign and when they failed to sign them again the entire purpose of the association was defeated, and the association became virtually nonexistent and the members went on with their functions or other things without regard to that requirement for membership.

Mr. O'Brien: Thank you. Mr. Examiner, I wonder whether the record shows this is the same Mr. Guyon who was previously [144] sworn and testified yesterday?

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: Let the record so show.

Did you want to offer that in evidence?

Mr. O'Brien: I would like to exhibit that to counsel here before I offer it.

Mr. Lund: This paragraph has no change, George, I might say.

Trial Examiner Greenberg: This is off the record.

(Discussion off the record.)

Trial Examiner Greenberg: On the record.

Mr. O'Brien: I offer General Counsel's Exhibit 2-B in evidence.

Trial Examiner Greenberg: Is there any objection? If not, General Counsel's Exhibit 2-B is received in evidence.

It is my understanding that it is the agreement of counsel that General Counsel's 2-B is a correct version of the bylaws of the association, and is to be considered as substituted as Page 3 of General Counsel's Exhibit 2, that page embodying an inaccurate version of the bylaws.

(The document heretofore marked General Counsel's Exhibit No. 2-B for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 2-B

County and any such firm, as a condition to becoming a member of the Association, shall be required

(Testimony of Frank R. Guyon.)

to sign, and thereby become a party to, the agreement of August 27, 1937, made between the Credit Stores Association and its members on the one hand, and the Los Angeles Central Labor Council of the American Federation of Labor and various Local Unions under the jurisdiction of that Council, on the other hand.

Applications for membership must be in writing from applying firm, designating the person in its organization who shall represent said firm in the Association and accompanied by check for the entrance fee.

Upon election to membership, the member shall sign the By-Laws.

The vote of a member or in his absence, the vote of a person duly authorized by proxy from member firm to act in place of said member, shall be binding on the member firm so represented.

Membership in this Association cannot be transferred or assigned, except by vote of the Board of Directors such membership certificate may be transferred, and the transferee made a member in lieu of the last former holder. [145-A]

Mr. Lund: That is my understanding.

Mr. Gilbert: So understood.

Mr. O'Brien: Perfectly all right, sir.

Q. (By Mr. O'Brien): Now, I think you testified in rather [145] complete detail regarding the negotiations for the December 17, 1948, contract.

(Testimony of Frank R. Guyon.)

There isn't anything you want to add to that, is there?

A. I don't remember everything I said yesterday, unless I am reminded or my recollection is. Perhaps Mr. Lund wants me to tell something further. I don't know what I can think of to add to it.

Q. Before you obtained the signatures of these various parties to the contract, had you been advised that the representation cases and the union security cases filed by the Clerks had been dismissed?

Mr. Lund: Just a moment. I object to the question on the ground he is trying to inject in this record the disposal of the two R cases. That is irrelevant and immaterial to this proceeding.

Mr. O'Brien: I intend to do that, sir.

Mr. Lund: We think it is irrelevant and immaterial, and for that reason I object to the question.

The Witness: Will you repeat it, please?

Mr. Lund: Wait until I get a ruling on it.

Trial Examiner Greenberg: You say that you contend that the R case disposition is material to the issues here?

Mr. O'Brien: I certainly do.

Trial Examiner Greenberg: What is the materiality of it? [146]

Mr. O'Brien: Because——

Mr. Lund: May I interrupt, because in arguing what the materiality is, he is going to probably disclose what the results were, and that is just the

(Testimony of Frank R. Guyon.)

thing we don't want to get out. May I say this——

Trial Examiner Greenberg: The results are no secret. They are a matter of public record.

Mr. Lund: They won't be secret in your mind anyway. We would just as soon that you ask what the results were. I assume you are going to do it, but our objection is that they are really not material in this proceeding.

Trial Examiner Greenberg: I don't know how I can rule intelligently on the objection unless I know what General Counsel is leading to. I am certain you will have to give me credit for enough mental discipline so that I do not decide this case on irrelevant and immaterial facts.

Mr. Lund: I want to say by way of observation I feel I am justified in my interpretation of his reason for offering this evidence. The regional attorney in that proceeding made a determination of an issue which is now presently before this Board, and I can see no necessity whatsoever of bringing that record in unless Mr. O'Brien wants to argue that it is persuasive evidence. The mere fact that the Regional Director made a ruling and determined an issue which is before this Board I think is irrelevant and immaterial, and I think the [147] Trial Examiner will agree with me 100 per cent that the Regional Director's determination of any issue now before this Board is not material. The mere fact that he has filed this complaint here certainly shows that he feels they have to decide that question.

Trial Examiner Greenberg: Mr. Lund, what you

(Testimony of Frank R. Guyon.)

fear is that I will be unduly influenced by some disposition that the Regional Director made. I think I am enough of a lawyer that I shall not rely in making a determination of the issues in this case upon matters which are not material. If I do commit that error, I am afraid you will just have to have recourse to the normal process of appeal.

I am going to let Mr. O'Brien tell me why he thinks this is material.

Mr. O'Brien: This is material as to the matter of jurisdiction, and I say that is serious, and that is why Mr. Lund is objecting so strenuously here.

Trial Examiner Greenberg: Just what—you say a representation petition was filed that was administratively determined at some stage of its development in the regional office here?

Mr. O'Brien: That is right, sir.

Trial Examiner Greenberg: How do you think that that has any bearing upon the issue here?

Mr. Lund: If I may interrupt again, let's suppose for [148] illustration we say that the Regional Director in that proceeding determined that the Board had jurisdiction over Lee's. That can't have any influence on this case as evidence of the Board's jurisdiction.

Trial Examiner Greenberg: I don't think that you can say if he does prove that that I have got to take it.

Mr. Lund: That is along the line of his approach.

Mr. O'Brien: No, it is not. I am making no

(Testimony of Frank R. Guyon.)

claim at all that the Regional Director's determination is binding upon the Board or upon this Trial Examiner.

Trial Examiner Greenberg: Not even contending that it is persuasive?

Mr. O'Brien: It is not even persuasive, but it is important in showing that Mr. Guyon in negotiating for his clients did rely at least in part——

Trial Examiner Greenberg: On the assumption that they were in commerce and subject to the jurisdiction of the Board?

Mr. O'Brien: Upon the Regional Director's disposition of the prior case.

Trial Examiner Greenberg: I don't think that has anything to do with the issues in this case. I will sustain the objection.

Mr. O'Brien: I will have to come back to the same thing in another way then. I am awfully sorry.

Q. (By Mr. O'Brien): Now, during what period of time, [149] Mr. Guyon, have you negotiated for Lee's Stores?

A. Well, I have entered into numbers of negotiations ever since 1937.

Q. And in connection with Lee's Stores did you ever request a showing that the Amalgamated represented a majority of the employees of Lee's?

Mr. Lund: Just a moment. I am going to object to that on the ground it is incompetent, irrelevant and immaterial. There is no allegation in this complaint relating to the matter of majority. If he pro-

(Testimony of Frank R. Guyon.)

poses to challenge that it did not represent an uncoerced majority, then we will object because that is not put in issue in the pleadings.

Mr. Rissman: I will join in that objection.

Trial Examiner Greenberg: Mr. O'Brien?

Mr. O'Brien: I just want to know whether he has ever required of his client——

Trial Examiner Greenberg: What is the materiality of that? The pleadings certainly raise no issue of the majority status of the Amalgamated at the time the contract was entered into. Do the pleadings raise such an issue?

Mr. O'Brien: It is raised automatically as a matter of law.

Mr. Lund: No, it is not. He alleges——

Trial Examiner Greenberg: All right. Let us not argue it any further. I will sustain the objection—did you want [150] to be heard? Excuse me, Mr. Gilbert.

Mr. Gilbert: I very definitely wanted to be heard. There is an allegation here in Paragraph 14 that by the acts set forth in 8 and 9, namely, the execution of the agreement and the continuation of the check-off, there is a violation of 8 (a) (1), (2) and (3) of the Act, and I submit that by him incorporating the terms of the statute in that sense, the question of whether or not—the only way we can determine whether or not the company lent illegal assistance to the union is to find out whether the union was in fact the statutory bargaining rep-

(Testimony of Frank R. Guyon.)

representative of the employees within the meaning of Section 9 (a) of the Act.

Mr. Lund: I want to be heard further.

Trial Examiner Greenberg: Just one minute, please. I would like to look at the complaint.

Mr. Gilbert: I don't think there is any question about it, Mr. Trial Examiner.

Mr. Rissman: May I be heard also, Mr. Greenberg?

Trial Examiner Greenberg: Yes, sir. We will let everybody be heard.

Mr. Gilbert: I would like to add just one additional fact, in calling your attention to Paragraph 8, that the allegation is the respondents enforced and gave effect to the agreement and, in the conjunctive, they required membership in the Amalgamated Clothing Workers of America as a [151] condition of employment.

Trial Examiner Greenberg: I think I can settle this matter. Excuse me for cutting you off. I just want to ask the representative of the General Counsel whether it is the contention of the General Counsel in this case that at the time of the execution or renewal, if any, of the agreement between respondents and the Amalgamated, the Amalgamated was not the duly designated bargaining representative of the employees covered by that agreement?

Mr. O'Brien: I can answer that question in this way, sir: It is the contention of General Counsel that if I were permitted to ask proper questions of this witness he would testify that at no time did

(Testimony of Frank R. Guyon.)

he ever request any showing of majority either of any of his individual clients or his clients collectively.

Trial Examiner Greenberg: That isn't what I asked you at all. I asked you whether you are raising the contention in this case that the contract was entered into between the employers and the union which was not the duly designated representative of the employees covered by the contract.

Mr. O'Brien: I am not so charging.

Trial Examiner Greenberg: Then why do you want to ask the question which is now pending? What materiality does it have?

Mr. O'Brien: Because it will show, I think, that the [152] witness presently on the stand, although he has testified that his organization was—well, practically it is out of business, that when the facts actually came up, when the question was raised as to whether or not the unit was appropriate for collective bargaining, he regarded the organization as being in existence; now when a charge is filed he finds the organization is dead. I am sure that this witness can explain that.

Mr. Rissman: What difference would the explanation make if he could explain it, in view of the fact that there is no charge or no allegation in the complaint here?

Trial Examiner Greenberg: I just don't understand what you are getting at Mr. O'Brien, as to what relationship, if any, there is between the

(Testimony of Frank R. Guyon.)

majority status of the Amalgamated and the existence or nonexistence of the organization.

Mr. O'Brien: Well, in outline, suppose I put it this way: I think there can be no question on the state of the record as it stands now that Federal is engaged in interstate commerce.

Trial Examiner Greenberg: I understand why the existence or nonexistence of the Association is important in this case, so don't trouble yourself to cover that point, but I don't see what relationship there is between the pending question and that issue.

Mr. Gilbert: I think that there is some confusion in [153] this situation. I would like just a moment, without even necessarily going off the record, to confer with Mr. O'Brien. I will state that the reason for the request is that the charge filed in this matter is predicated upon the definite position of charging that the Amalgamated Clothing Workers of America never has been the bargaining representative of the employees of either Federal or Lee's, and this coming as a statement by the attorney for the General Counsel comes as a complete surprise to me.

Mr. Rissman: Well, assuming that the charge states as Mr. Gilbert has said, we are proceeding upon the complaint and not upon the charge. Apparently the Regional Director considered that portion of the charge and decided it had no merit.

Trial Examiner Greenberg: I think, Mr. O'Brien, you are going to have to take a position that you are raising that issue or that you are not.

(Testimony of Frank R. Guyon.)

If you are not raising that issue, I certainly don't want to suggest that you do. I just want to say we will just confine ourselves to the issues which have been raised. There is no use going into the matter of the majority status of the Amalgamated, because I can't see that it has any bearing on the other issues. If you would like a recess to consider the matter, I am willing to give you one.

Mr. O'Brien: General Counsel has tried to keep this issue within the period of the statute of limitations here. [154] I think it would be very clear from the testimony of this witness that the Amalgamated was never designated by the employees either in the individual stores or in the collective stores.

Trial Examiner Greenberg: What you are hinting at is you are precluded by the statute of limitations from raising that issue?

Mr. O'Brien: That is what I am saying.

Trial Examiner Greenberg: Well, then let us not go into it.

Mr. O'Brien: But it is the matter of commerce that I want to bring in here now.

Trial Examiner Greenberg: You haven't made it clear by what you said what that has got to do with commerce. I don't understand that. I am perfectly willing to give you another opportunity to explain what relationship there is between the commerce issue and whether or not the union was a majority representative.

Mr. Gilbert: I would like to request a five-minute recess, Mr. Trial Examiner.

(Testimony of Frank R. Guyon.)

Mr. Lund: Before we recess, I would like to make one comment.

Trial Examiner Greenberg: I don't think I am granting a recess right at this moment.

Mr. Gilbert: Mr. Trial Examiner, it seems to me the [155] position in this matter by you is that the charging party has no interest in the proceeding. That seems to be the view of the Trial Examiner.

Trial Examiner Greenberg: Not at all, sir.

Mr. Gilbert: The fact of the matter is this, that as I understand the function and the rights provided by the Rules and Regulations to the charging party in a proceeding, rights which any court recognizes, they have that duty, I will say, speaking now on the matter of private litigation, and I think I am as familiar with that as the Trial Examiner. The fact of the matter is that I think you have a right to protect our rights, but the position of the charging party in this proceeding is that the issue of whether or not the Amalgamated was the constituted bargaining representative or was not when the agreement in question was entered into goes definitely to the issue of the charge of contravention of Section 8 (a) (2) of the Act which was contained in the charge, and which was accepted and incorporated as an allegation in the complaint. There was a definite 8 (a) (2) allegation in this complaint as there was in this charge, and I am surprised at this particular point by the fact that the complaint which to me alleges very plainly, as I called to the attention of the Trial Examiner, that the complaint

(Testimony of Frank R. Guyon.)

specifically alleges that by executing the contract and by maintaining the check-off the respondents have engaged in [156] unfair labor practices within the meaning of Section 8 (a) (2)——

Trial Examiner Greenberg: On that one point—excuse me, will you, please? I just want to save time?

I am going to overrule the objection, in view of what you have just said, and I hope you don't feel hurt by my interrupting you, but in view of your comment I don't think further argument is necessary.

Mr. Gilbert: I agree with you.

Trial Examiner Greenberg: I think despite the fact that the issue of the majority status of the union, let us say the legality of the contract as being affected by the majority status or non-majority status of the Amalgamated at the time it was entered into cannot be raised because of the statute of limitations, the statute of limitations is not, however, a rule of evidence, and that any evidence in regard to the status of the union at the time the contract was entered into would be material on the issue, for example, of the legality of the check-off provision, and that therefore it is part of the whole picture of illegal assistance which is alleged in the complaint.

I think I am going to reverse my ruling and allow the testimony to be given.

Mr. Rissman: Except, Mr. Greenberg, the paragraph 8 of the complaint specifically spells out——

(Testimony of Frank R. Guyon.)

Mr. Lund: Exactly. [157]

Mr. Rissman: —the manner in which the General Counsel believes that it is illegal, specifically spells out the manner in which he believes assistance was given to the Amalgamated. No place in the complaint is any question raised about the majority status of the union. The only question before the Examiner, the only question raised by the pleadings, is whether or not it was improper for these respondents to enter into a union shop contract with the Amalgamated. No question is raised as to whether they had a right to enter into any agreement at all. As Mr. O'Brien stated earlier, he is not raising that question and can't raise that question. I don't think he should be able to go into it at this time, in connection with his claim that it has a bearing on the case.

Trial Examiner Greenberg: I am allowing the question to be asked, and the matter of the status of the Amalgamated to be gone into here, as bearing on the 8 (a) (2) allegations in the complaint.

Mr. Lund: I am still going to throw in two thoughts here. I feel an allegation of the complaint has been completely overlooked.

Trial Examiner Greenberg: All right, sir.

Mr. Lund: That is the allegations of Paragraph 12, where the General Counsel says the effect of Paragraph 8 of the complaint is that the union security provisions, at least in [158] this whole contract, were illegal. There is an allegation in connection with 9 (e) of the act in there.

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: That is right. I am accepting this testimony as bearing not on the legality or illegality of the contract itself, but as bearing on the whole picture of alleged assistance to the Amalgamated.

Mr. Lund: I think you ought to point out the fact which is in the record that as of the date that this contract was signed, which is December 17, 1948, there was then in effect a valid contract with a union shop provision, under which the great majority of the employees had to be members of this union. That contract was signed before the Amendment to the Act in June of 1947.

Trial Examiner Greenberg: Between the Amalgamated and the——

Mr. Lund: C.I.O., which is General Counsel's Exhibit 3 in the record here.

Trial Examiner Greenberg: I will receive it as a fact to be taken into consideration, and I will certainly do so.

Proceed, Mr. O'Brien.

Mr. O'Brien: There is a question pending, Mr. Trial Examiner.

Trial Examiner Greenberg: I remember what the question was, if you don't mind my restating it.

Mr. O'Brien: Quite all right, sir. [159]

Trial Examiner Greenberg: When you were negotiating the contract with the respondents, the contract in question being the one signed on December 17, 1948, did you at any time request the representative of the Amalgamated for any proof that his

(Testimony of Frank R. Guyon.)

union represented a majority of the employees in the firms covered by the contract?

Mr. Ladar: He didn't ask about all the firms, did you Mr. O'Brien?

Mr. O'Brien: No.

Trial Examiner Greenberg: No, I say Lee's and Federal Stores.

Mr. Ladar: Just a minute. Insofar as Federal is concerned, I object to that question upon the ground that it is incompetent, irrelevant and immaterial, and that since the Trial Examiner has disclosed his basis for allowing the question is that the Board has charged violation of Section 8 (a) (2), I would like to call your attention to the fact that Paragraph 15 of the complaint, in striking contrast with the allegations in the last of Paragraph 14, does not even charge Federal with a violation of Section 8 (a) (2), but Section 8 (a) (1) and (3).

Mr. Gilbert: I call counsel's attention to Paragraph 14, which charges Federal.

Mr. Ladar: Is Federal mentioned in there?

Trial Examiner Greenberg: In 14, yes. [160]

Mr. Ladar: At any rate, the objection was that it is still incompetent, irrelevant and immaterial.

Mr. Lund: I join in the same objection.

Trial Examiner Greenberg: The objection is overruled.

The Witness: The answer is no, it was none of my business.

Q. (By Mr. O'Brien): Thank you, sir. Now, before you obtained the signatures to this December

(Testimony of Frank R. Guyon.)

17, 1948, contract, had you been advised by the Board of the dismissal of the representation case?

A. Talking about what case now?

Q. That is Case No. 21-RC-596.

Mr. Lund: We object to the question on the same grounds.

Trial Examiner Greenberg: I admire your persistence.

Mr. O'Brien: I am going to ask right at this point in connection with that to make an offer of proof, and I will request Mr. Lund to supply certain details.

Trial Examiner Greenberg: I sustain the objection.

Mr. O'Brien: The document that he has now, I offer to prove.

Mr. Lund: I will stipulate to the dismissal of the petition on the date of this document, if that is what you are after.

Mr. O'Brien: I mean, sir, that I want to have you read certain language from it.

Mr. Lund: Well, that I won't do. I will stipulate now if [161] you want me to stipulate that on December 3, 1948, the Regional Director dismissed the petition, a copy of which you introduced as General Counsel's Exhibit 5.

Mr. O'Brien: That would be in the case 21-RC-596?

Trial Examiner Greenberg: Do you want to so stipulate?

Mr. O'Brien: I will so stipulate.

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: On December what?

Mr. Lund: December 3, 1948.

Mr. O'Brien: December 3, 1948.

Trial Examiner Greenberg: The Regional Director dismissed the petition in case what?

Mr. O'Brien: 21-RC-596.

Trial Examiner Greenberg: All right, sir.

Mr. O'Brien: General Counsel's Exhibit 5 for identification we will introduce into evidence as the copy of that original petition filed by the Clerks union involving Lee's Department Stores.

Mr. Rissman: If the Examiner please, if we are going to go into portions of Case No. 21-RC-596, I think it is going to become incumbent upon the Amalgamated to introduce everything that occurred there, because if any portion of those proceedings is at all material for anything here, I think the Trial Examiner and the Board should have the benefit of the complete investigation made by the Regional Director and the contentions of the parties and the circumstances surrounding the [162] entire investigation. Otherwise, I submit that none of it is material.

Trial Examiner Greenberg: I have sustained Mr. Lund's objection to the question regarding the R case, and counsel have simply stipulated the fact of the dismissal of the petition.

Mr. Rissman: Of which you could have taken judicial notice without the stipulation.

Mr. O'Brien: That is right. Will you mark this for identification as General Counsel's Exhibit 7?

(Testimony of Frank R. Guyon.)

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 7 for identification.)

Mr. O'Brien: General Counsel's Exhibit 7 next in order, which I expect to have rejected on the basis of the Trial Examiner's prior rulings, is a copy of a letter dated December 3, 1948, addressed to Retail Clerks International Association, A. F. of L., 624 Rives Strong Building, 112 West Ninth Street, Los Angeles 15, California, attention of Adele Stillwell, re Lee's Department Store, Case No. 21-RC-596, showing that copies were served upon Lee's Department Store, 6501 Pacific Boulevard, Huntington Park, California. Is that the copy that you have, Mr. Lund?

Mr. Lund: Yes.

Trial Examiner Greenberg: That is a copy from the Regional Director? [163]

Mr. O'Brien: From the Regional Director, and bears the signature of Howard F. LeBaron, is that right, Mr. Lund?

Mr. Lund: That is correct.

Mr. O'Brien: The pertinent portion of this exhibit is paragraph 2.

Mr. Lund: I will object to your reading that. If you are going to offer it as an exhibit, it will be admitted or it won't be admitted. If it is not admitted, it will be in the rejected exhibit file.

Trial Examiner Greenberg: If you want to take

(Testimony of Frank R. Guyon.)

a suggestion, why don't you just make an offer of proof and get your position in the record?

Mr. Lund: I have no objection to the Trial Examiner reading the letter. Make an offer of the exhibit, then if he rejects it make your offer of proof and it will be in the rejected exhibit file.

Mr. O'Brien: There is no question of the authenticity of it. There is only one paragraph I want in here.

Mr. Lund: I will hand it to the Trial Examiner so he can rule on it.

Mr. O'Brien: I offer General Counsel's Exhibit No. 7 in evidence.

Mr. Lund: To which we object on the grounds it is incompetent, irrelevant and immaterial.

Trial Examiner Greenberg: I take it that this letter is [164] being offered to establish the point which I rejected by sustaining Mr. Lund's objection to a question about the representation proceeding, is that correct, Mr. O'Brien?

Mr. O'Brien: In substance, yes, sir.

Trial Examiner Greenberg: Then I will reject General Counsel's Exhibit 7 and direct that it go into the rejected exhibits file.

(The document heretofore marked General Counsel's Exhibit No. 7 for identification was rejected.)

Mr. O'Brien: And I might as well warn you, Mr. Examiner, before we adjourn I will probably reargue that with you. I am sorry.

(Testimony of Frank R. Guyon.)

Mr. Rissman: That is fair warning.

Q. (By Mr. O'Brien): Now, there was one other question I wanted to ask you, Mr. Guyon. That is, in your knowledge of the credit store business in California, which is very long, sir?

A. Oh, within my field of knowledge, limited field of knowledge, 22 years.

Q. And in your expert opinion would it be possible for a credit store, such as your client's, to operate without credit information from all over the country?

Mr. Lund: We object to the question on the ground the witness is not qualified, it is not limited to our client, Lee's; it is general, vague and indefinite, calls for a [165] conclusion.

Mr. Rissman: I would further object on the ground that it has no relation to any of the issues in this proceeding.

Trial Examiner Greenberg: I will overrule the objections.

The Witness: Repeat it, please.

Mr. O'Brien: Will you read the question?

(The question was read.)

The Witness: In my opinion, expert or not, there isn't a single one of them that once out of ten thousand times requires any information from any part of the country except in this area in Southern California here, so far as the stores are concerned that are located here.

Mr. O'Brien: Thank you, sir.

(Testimony of Frank R. Guyon.)

Mr. Gilbert: I have a few brief questions, and they will be supplementary, Mr. Trial Examiner.

Cross-Examination

By Mr. Gilbert:

Q. Mr. Guyon, do you remember attending an informal conference at the offices of the Twenty-First Region of the National Labor Relations Board in connection with the investigation of Case 21-RC-596 on or about November 15, 1948?

Mr. Lund: We object to the question as incompetent, irrelevant and immaterial. Again he is going into the prior R case.

Trial Examiner Greenberg: I would like to ask Mr. Gilbert [166] to state the purpose.

Mr. Gilbert: I will be glad to state the purpose. It is to show this, that at this conference at that date, the witness who now has stated a contrary position with regard to the existence of the Credit Stores Association, stated affirmatively that such an association existed and took a position with respect to bargaining.

Trial Examiner Greenberg: Overruled.

Q. (By Mr. Gilbert): Do you remember the question? Were you at this conference on November 15th? A. Yes, I was.

Q. Do you remember that I was also present at that conference? A. Yes.

Q. Isn't it a fact that you made the statement at that conference that for over 10 years the mem-

(Testimony of Frank R. Guyon.)

bers of the Credit Stores Association had been bargaining on an association-wide basis?

A. I don't recall making the exact statement, but I may have.

Q. Do you recall making any statement similar in substance or effect?

A. I don't remember now about the point, I don't remember, but I remember Mr. Taylor asked me some questions along that line and I answered to the best of my belief.

Q. What do you remember on the subject of association-wide bargaining at that conference? [167]

A. Well, that is too broad a question.

Q. You let the Trial Examiner decide that. I am asking you, you see.

A. I don't know what you mean, I will say.

Q. You say you remember that Mr. Taylor asked you some questions and you gave him some answers. I want your best recollection of what those questions were and what your answers were.

A. He asked me if I had a copy of the contract and I showed it to him and showed him the signatures on the contract, and then you asked me if you could see it, and you remember I said I can't let you have it.

Q. Pardon me just a minute. You are referring now to General Counsel's Exhibit No. 3 in this proceeding, is that right?

A. Whatever it is.

Mr. Lund: That is right.

Mr. Rissman: This document with the wage clause deleted.

(Testimony of Frank R. Guyon.)

The Witness: The contract. Well, it probably was not this same document, because I think we printed them later, but it was very probably a duplicate of this document, yes.

Q. (By Mr. Gilbert): You say at that time you declined to show all of the document to me, is that right?

A. I said I would show you certain specific passages you might ask for, but I felt in respect to the other union that [168] it would not be fair to show the wage clauses.

Q. Do you recall any discussion at that conference of the Credit Stores Association?

A. Yes.

Q. What do you recall?

A. I remember there was a conversation about it.

Q. Do you remember any discussion of the function of the Credit Stores Association?

A. I think so.

Q. Do you remember any reference to the Southern California Merchants Association?

A. No, I don't remember any.

Q. Well, to attempt to refresh your recollection, do you remember your stating to Mr. Taylor, field investigator for the Board, that the Southern California Merchants Association functioned as a credit bureau and trade association, and that the Credit Stores Association's sole function was that of bargaining with respect to contracts?

A. I very probably did. I can't remember it.

(Testimony of Frank R. Guyon.)

Q. At any rate, that was the fact at that time. wasn't it?

A. That was the fact at that time, yes, so far as in my opinion, it was.

Q. Now, on this matter of the length of time that the Association members had dealt with unions generally, do you remember pointing out that in 1941—that previous to 1941, [169] the members of the Association had had agreements jointly with the American Federation of Labor?

A. Will you please explain what you mean by jointly? That term has been abused often in my relations.

Q. Do you remember saying anything about them having had, the members, having contracts with the A. F. of L. prior to 1941?

A. I think I did.

Q. And then do you remember telling Mr. Taylor at that time that the first Amalgamated contract was in 1941?

A. Probably.

Q. And do you remember listing for him the members of the Credit Stores Association who were parties to General Counsel's Exhibit 3?

A. I don't recall that I listed them at that moment or at that conference, but I did get them to him later.

Q. You don't remember naming Brown's, Star Outfitting, Federal, Golden State Department Stores, Coast Department Stores, Lee's Department Stores and one other?

A. I don't recall, but it is very possible I did.

(Testimony of Frank R. Guyon.)

If Mr. Taylor had asked me I certainly would have answered that.

Q. And you also believe it is probable, isn't it, that you told him that they were members of the Credit Stores Association? A. Yes. [170]

Mr. Gilbert I have no further questions.

Trial Examiner Greenberg: Anything further?

Mr. Lund: I have a few questions.

Trial Examiner Greenberg: Do you have any further questions?

Mr. O'Brien: No, I have no further questions.

Mr. Lund: I have some.

Q. (By Mr. Lund): General Counsel's Exhibit 2, which are these bylaws, you made from the original for Mr. Taylor at his request for that document, did you not?

A. I don't know whether that was sent to Mr. Taylor. It was somewhat subsequent to that, if this is it, if this is what I mailed to him.

Q. Did you mail to Mr. Taylor excerpts from the bylaws of the Credit Stores Association?

A. Excerpts, yes.

Q. Did the bylaws of the Credit Stores Association provide for annual meetings of the membership? A. I am quite sure they did.

Q. Have there been since 1941, so far as you know, any annual meetings of the members of the Credit Stores Association, if there were such members?

A. Well, there have not been for a good many years. I don't know when—I don't know just when

(Testimony of Frank R. Guyon.)

they ceased. I don't believe there was one after—I am quite sure there were [171] none after 1941.

Q. The bylaws provided for the annual election of directors? A. Yes.

Q. Have there been, since sometime around 1941, any annual elections of directors?

A. There was never any election since that of directors.

Q. Have there been any elections since 1941, so far as you know?

A. Well, in my opinion the starting directors held on, those that were elected before that.

Q. Has there been anybody who since 1941 or at this time is purporting to act as directors of this association? A. No.

Q. Have there been any officers in this association, so far as you know, since 1941?

A. Same answer, that in my opinion there were not, because there was no election. I don't think anybody considered that there was an actual association after those first Amalgamated contracts were signed in 1941.

Trial Examiner Greenberg: Didn't you consider that there was an association in 1947?

The Witness: In a very loose sense. I had kept on using the same name and the designation and probably still would have continued to do so if it had been offered to me again. Going back to then that is the way I recall the [172] circumstances here, and I think I will still go on using it instead of all this.

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: I don't mean to be offensive, but you are not acting on any other basis in 1947 when you entered into the contract?

The Witness: I did not enter into the contract.

Trial Examiner Greenberg: When you negotiated in the name of this association for respondents.

Mr. Lund: I would have to object now, object to questions based on an incorrect assumption, and I call the attention of the Examiner to the fact that if he examines General Counsel's Exhibit 7 and General Counsel's Exhibit 4, that those are separate contracts with each company.

Trial Examiner Greenberg: Yes, but they also have right on their face a recital that they are entered into by and between the——

Mr. Lund: By and between the signatory parties.

Trial Examiner Greenberg: The Credit Stores Association and the Amalgamated, and Mr. Guyon has previously testified that he negotiated this contract with the representatives of the Amalgamated, is that correct?

The Witness: No, that is not correct: I did not negotiate the contract. I entered into the negotiations.

Trial Examiner Greenberg: Didn't you in your previous testimony testify that you had talked to the representative of [173] the—that you had been approached by the representative of the Amalgamated?

The Witness: That is right.

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: With the demand for higher wage scales?

The Witness: That is right.

Trial Examiner Greenberg: And that you had negotiated with him on that question?

The Witness: That is right.

Trial Examiner Greenberg: And that finally you reached an agreement with them on that?

The Witness: Wait a minute. I testified——

Trial Examiner Greenberg: I just wanted to find out what the contention was.

The Witness: To make it very accurate, my recollection of my testimony is this: That the check-off and increase for the employees were relayed to each individual store, and that a group of them met in my office at the Southern California Merchants Association and discussed prevailing wages. Mr. Glasman of the Amalgamated claimed that the contract rates were too low for a living wage, and they asked me to gather data on the prevailing wages, and they had another meeting and they decided each one individually.

Trial Examiner Greenberg: Who decided?

The Witness: The store owners and all of [174] them.

Trial Examiner Greenberg: Where was the meeting held?

The Witness: They met in my office and discussed the prevailing wages and some appraisals in the monthly rates those prevailing wages indicated,

(Testimony of Frank R. Guyon.)

and they told me, each one of them separately, no one had any control over the other.

Trial Examiner Greenberg: And then subsequently, as you testified, this contract was mimeographed in your office, was it not?

The Witness: Yes, yes.

Trial Examiner Greenberg: And you had this recital put in—I assume you are the one that had that recital put in?

The Witness: That has been put in for years and years.

Trial Examiner Greenberg: And then it was put in this, too?

The Witness: That is right.

Trial Examiner Greenberg: By and between the members signatories of Credit Stores Association?

The Witness: I could have just as well put in there between signatory members of the Southern California Merchants Association, because they are.

Trial Examiner Greenberg: But you didn't?

The Witness: No, I didn't use that designation.

Trial Examiner Greenberg: What I am getting at, at the time these discussions were taking place, didn't you in your own mind assume that you were acting as the representative of [175] the Credit Stores Association in behalf of these people?

The Witness: No, because at that time I knew I wasn't because I had been designated prior to this by each individual member as his attorney on another retainer as their labor relations attorney. Each individual paid me individually.

(Testimony of Frank R. Guyon.)

Trial Examiner Greenberg: But that did not cause you to change the form of the contract and enter into individual contracts. You still retained the same contract with the name of the Association on it?

The Witness: That is right, just had it copied and changed the rates, whatever it was.

Trial Examiner Greenberg: At the time the contract was signed, did any representative of the employers who signed the contract raise any question about the name of the association being in there?

The Witness: Why, no.

Trial Examiner Greenberg: Nobody raised any question about that?

The Witness: No. I will clear that up, if you want me to.

Trial Examiner Greenberg: I would like you to tell us all you know.

The Witness: If someone had asked me the day that this contract was signed, "Is there such a thing as the Credit Stores Association?", I would have said, "Sure." "What is it?" [176] I would have described it. "Do you have any connection with it?" I would have said, "Yes, I am secretary."

But since then I have been reviewing it and those conclusions I might have made at that time are wrong.

Trial Examiner Greenberg: That is all I wanted to find out.

Q. (By Mr. Lund): As I understand the testimony so far, since about 1941, so far as you know,

(Testimony of Frank R. Guyon.)

there have been no officers, directors or employees of the Credit Stores Association, meetings of members or any committees appointed, or acts of any character, is that the substance of it?

A. No elections or appointments of committees, except at times a certain number of stores would act as a committee on their own, the same as our discussion with Mr. Glasman, our association or whoever it was meeting with Mr. Glasman. I don't recall even that in the recent years. I mean by recently three, four, five years.

Q. Directing your attention to General Counsel's Exhibit 7, of the excerpts from the bylaws it spells out in article 8 the powers of the directors, and paragraph 6 of article 5 has some provisions relative to the board of directors shall decide all questions arising in the interpretation of the agreement made with major units of the association or its members or other parties and so on. Since at least 1941 has any group met purporting to act as the Board of directors of [177] the association made any interpretations or decided any question involving the interpretation of the C.I.O. contracts?

A. Never.

Q. Have there been any questions involving a specific interpretation of C.I.O. contracts?

A. Oh, yes.

Trial Examiner Greenberg: Was the wage scale that was agreed upon in that contract dated December 17, 1948, a blanket wage scale to cover all of the signatories?

(Testimony of Frank R. Guyon.)

The Witness: Nobody was committed to sign anything.

Trial Examiner Greenberg: And when they signed, those employers who did sign the contract, did they sign and agree to one standard wage scale for all of them, or were there individual wage scales provided for each individual signatory?

The Witness: Well, in many respects, in most of those, I will say, the wage scales certainly, the wage scales were similar. In other stores they did not apply.

Trial Examiner Greenberg: In other words, you don't deny that some of the employers had a class of employees that some of the other employers did not employ?

The Witness: That is right.

Trial Examiner Greenberg: But was there any wage scale which called for certain scales of wages for given categories of employees which applied to all the signatories?

Mr. Lund: That is in the exhibit. [178]

Trial Examiner Greenberg: I see what you are referring to right there on the first page. That I don't have to ask any questions on.

Mr. Lund: No. It shows that it is uniform.

Q. (By Mr. Lund): Now, the bylaws provide that the secretary take the minutes of meetings down? A. Yes.

Q. Have you kept any minutes of meetings since 1941? A. I never kept any, before or since.

Q. And did the bylaws also provide any secre-

(Testimony of Frank R. Guyon.)

tary was to make an annual report of the conduct of the business of the association? A. Yes.

Q. At least since 1941 have you made any such report?

A. Well, I would have—about the only report I have made is once in a while, not every year, two years, maybe three, sometimes less, I mailed them a financial statement or something like that.

Q. When was the last time you mailed any such financial statement?

A. I don't know, a couple of years, maybe three or four years. I don't know. There was no obligation on me at all. They didn't expect it.

Q. Do you have any funds in a bank account in the name of the Credit Stores Association? [179]

A. At the present time, yes.

Q. About how much?

A. About \$175.00, I guess, something like that.

Q. Those were collected on various dates?

A. There is no current.

Q. There has been no income?

A. I don't know as there ever has been.

Q. My point is, when was the most recent addition to that account?

A. Oh, sometime in 1948.

Q. Nothing since then?

A. I am not sure about that. I haven't any recent addition. As I mentioned yesterday, I was allowed to draw a certain amount from time to time. Most of that stopped in December, 1948, and when I became separate individual attorney for the

(Testimony of Frank R. Guyon.)

different stores, they paid me direct that retainer fee.

Trial Examiner Greenberg: Did that happen before or after the execution of this contract?

The Witness: Before.

Q. (By Mr. Lund): As I understand your testimony on direct, you did meet with a group of employers on or about December 9, 1948, relative to wage scales?

A. We did hold a meeting, but I wouldn't be sure that was the last one or not. [180]

Q. At that time there was a meeting among these employers and the employers were asked to provide the wage scale for the employee's union, is that correct?

A. Well, each one was asked if he would be willing to have this for the wage scale, they asked each other.

Q. And each of them expressed himself?

A. Each of those present expressed themselves, some of them objecting a little on this point or that.

Q. Did Mr. Lee express the opinion of Lee's Department Stores?

A. I couldn't say. I don't remember as to whether he was there. I think he was, yes.

Q. And he did express assent to the new wage scale?

A. Well, if he was there he did, because I know all those present did.

Q. Was Mr. Brown there? A. No.

Q. Was anybody else absent from the meeting,

(Testimony of Frank R. Guyon.)

other than Brown, of those who signed the contract, subsequently signed the contracts?

A. Well, I have an idea one other was absent, but I am not sure.

Q. After this meeting of December 9th, did you contact Mr. Brown and ask him if this scale would be satisfactory to his store? [181] A. Yes.

Q. Mr. Brown negotiated a contract with that wage scale in it, then, did he? A. Yes, sir.

Q. Directing your attention to General Counsel's Exhibit 4, you will notice at the top of the page where the date appears there is a line under 17th. Do you recall that on the original of that document the date was inserted in ink, the 17th?

A. I do recall it.

Q. Was it inserted in ink, the 17th, the same day the contract was signed? A. I think so.

Q. Do you recall whether Farley's ever signed any contract different from the one signed by these other companies? A. Yes.

Q. That was with the C.I.O.?

A. Oh, I misunderstood your question the first time. I thought you meant the Amalgamated. I beg your pardon. Contract different from this one?

Q. Well, did they ever sign?

A. Different from the other members?

Q. Was Farley's at one time a member of the Credit Stores Association? A. Yes. [182]

Q. And did they join in any contract with the other employers who had signed the contract with the C.I.O.?

(Testimony of Frank R. Guyon.)

A. That is right, the Amalgamated contracts.

Q. Did they sign at any time any separate contract with the C.I.O., different in any respect from this so-called Amalgamated contract?

A. Yes, they did.

Q. The negotiations on that were handled through you?

A. Well, just talking to Mr. Glasman for them, I guess. I may have asked Mr. Glasman at their request whether he would make that change in their contract, that difference in their contract.

Q. There was just one thing different in that contract from the one that the others signed?

A. Well, at least one.

Q. At the time that that was signed, the contract was signed between Farley's and the C.I.O. and this Amalgamated Clothing Workers, was Farley's a member of the Credit Stores Association, if there were any members? A. Yes. ..

Q. Directing your attention again to General Counsel's Exhibit 4, in Paragraph 11 thereof, has that paragraph or a similar paragraph been in each of the contracts with the C.I.O. since 1941?

Mr. O'Brien: What article again, sir? [183]

Q. (By Mr. Lund): Article 11.

A. Well, I am sure it was in that. It was in the A. F. of L. contracts that preceded it.

Q. Directing your attention to Article 5, subparagraphs 2 and 3, do you recall whether the union shop provisions therein contained were originally as set up in the contract of the C.I.O. at the request of

(Testimony of Frank R. Guyon.)

the union, the C.I.O., or at the request of the employer? A. Yes.

Q. At the union's request? A. Yes.

Q. Now, as I understand it, it was after this meeting of December 9, 1948, that a group of employers held a meeting with Mr. Glasman and settled on the new wage scale in the contract?

A. Yes.

Mr. Lund: No further questions.

Trial Examiner Greenberg: Anything further with this witness? Thank you, sir.

Mr. O'Brien: Nothing further. Thank you very kindly, Mr. Guyon.

Trial Examiner Greenberg: You have no further questions?

Mr. Ladar: No, I have no further questions.

(Witness excused.) [184]

* * *

ROBERT M. GISSER

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. O'Brien:

Q. Now, picking up where we left off yesterday, Mr. Gisser, for Mr. Lund's benefit, I think you testified briefly that you were in charge of the Federal Division of Speigel?

A. That is right. [185]

* * *

(Testimony of Robert M. Gisser.)

Trial Examiner Greenberg: In other words, of the total volume of annual purchases that you make, approximately 30 per cent are shipped to you or purchased from suppliers and shipped to you directly from outside the State of California? [189]

* * *

The Witness: I think we will be closer if I say 25 per cent. That would be correct.

* * *

Q. And then you said approximately 20 per cent of your total purchases each year are purchased from jobbers or other suppliers in the State of California, but which you know originate from outside of the State of California? A. That is right.

* * *

Q. You said 25—you are right. So that makes up approximately 45 per cent?

A. That is about what it is.

Q. Is the remainder purchased and manufactured inside the State of California?

A. Pretty much that, take off 5 per cent one way or the other, but we don't always delve into the exact locality. [190]

* * *

Redirect Examination

* * *

By Mr. O'Brien:

Q. Well, in any event, the three stores, the one downtown here, the one on South Broadway and the one in Huntington Park are the three stores that

(Testimony of Robert M. Gisser.)

are covered by the contracts with the Amalgamated?

A. Yes, that is right.

Q. And they are the only stores you have covered by the Amalgamated? A. That is right.

Q. And what is the total business of those three stores?

Mr. Ladar: Would you know the purchases of those three stores? [194]

* * *

The Witness: The volume of purchases for the three. Let's see if I have got a little note here to sort of expedite this. A range of two hundred and fifty to about three hundred twenty-five thousand dollars. [195]

* * *

WALTER L. KEEN

a witness called by and on behalf of the General Counsel, having been first duly sworn, testified as follows:

Trial Examiner Greenberg: State your name and address.

The Witness: Walter L. Keen, 510 Warner Avenue.

Direct Examination

By Mr. O'Brien:

Q. Your business address, sir?

A. 6501 Pacific Boulevard, Huntington Park.

Q. You are employed by whom?

A. Lee's Department Store.

(Testimony of Walter L. Keen.)

Q. In what capacity?

A. General Manager. [246]

Q. How long have you held that position?

A. Approximately five years.

Q. It is called Lee's Department. What departments do you have, sir?

Mr. Lund: Just a moment. I am going to object to the question and any succeeding questions along the same line. Counsel indicated that he wanted to interrogate this, Mr. Keen, in respect to commerce, which we haven't admitted.

Trial Examiner Greenberg: Objection overruled.

Mr. O'Brien: Will you read the question, Mr. Reporter?

(The question was read.)

The Witness: Men's, women's and children's apparel, jewelry, houseware, furniture and appliances and shoes.

Q. Are those all separate departments?

A. I don't understand you.

Q. Are they all separate departments?

A. I don't understand what you mean by "separate."

Q. You have separate departments in your store for each category of merchandise?

A. You mean physically?

Q. Yes.

A. Well, the merchandise is separated.

Q. That's right. And you have a separate manager for each department? A. No. [247]

(Testimony of Walter L. Keen.)

Q. About how many employees do you have in the store?

A. I would say approximately 60 full-time employees.

Q. Sixteen? A. Sixty.

Q. Sixty full-time employees. Approximately what percentage of your business is done on credit, sir?

Mr. Lund: To which we object on the ground it is not in the pleadings in this case. There is nothing in the allegations of the complaint relative to that.

Trial Examiner Greenberg: Overruled.

The Witness: By credit, you mean installment credit?

Q. (By Mr. O'Brien): That's right, sir.

A. I would say approximately 70 to 75 per cent.

Q. Thank you, sir. I show you General Counsel's Exhibit 5 for identification, and ask you if you have seen that before?

Mr. Lund: I object to the question on the ground it is incompetent, irrelevant and immaterial. It has been so ruled by the Trial Examiner.

Trial Examiner Greenberg: That is the one that was rejected?

Mr. Lund: That's right.

Trial Examiner Greenberg: Sustained.

Mr. O'Brien: You mean I can't inquire whether he saw it or not?

Mr. Lund: It isn't material if he did see it. [248]

Trial Examiner Greenberg: Sustained.

(Testimony of Walter L. Keen.)

Q. (By Mr. O'Brien): After you saw this petition, sir, what action did you take?

Mr. Lund: I object to the question on the ground it assumes a fact not in evidence and immaterial.

Trial Examiner Greenberg: Sustained.

I should like to inquire at this point in order to avoid any possible injustice to you, if your inquiry is with relation to this subject matter or is it directed at some other point other than the one which you explained previously when I rejected this exhibit?

Mr. O'Brien: What I am doing, sir, is using this document to call the witness' attention to a particular time. I mean no disrespect.

Trial Examiner Greenberg: I am not offended in the slightest.

I wanted to ask whether you were pursuing that line of inquiry or directing it to some point other than the one you have already called to my attention.

Mr. O'Brien: Perhaps I can do it this way: I would offer to prove through this witness that when he received notice of the filing of this petition from the Labor Board he did inquire of his Department heads whether or not the A. F. of L. had a majority in his store.

Trial Examiner Greenberg: How is that material to the [249] issues here?

Mr. O'Brien: It is material in that—and I am not going to put the answer into his mouth—he may have or may not have had a majority at the

(Testimony of Walter L. Keen.)

time Lee's Department Store signed the contract which is already in evidence.

Trial Examiner Greenberg: I get your point. I will allow you to pursue that line of inquiry.

You don't have to refer to that document necessarily. You can ask whether there came a time when he made such an inquiry of his Department heads.

Q. (By Mr. O'Brien): Mr. Keen, you have heard our discussion. Did you receive a copy of the petition from the Labor Board?

Mr. Lund: I am going to object to it on the grounds that it is incompetent, irrelevant and immaterial.

Trial Examiner Greenberg: I will overrule the objection.

The Witness: Yes, we did.

Mr. Lund: Wait a minute. Read the question back to the witness.

(The question was read.)

The Witness: I don't know what the petition is.

Mr. Lund: He didn't receive it. He never saw it until this hearing.

Q. (By Mr. O'Brien): Did you receive notice of the filing of a petition? A. Yes, sir. [250]

Mr. Lund: Let that be a lesson to you, Mr. Witness, to listen to the questions and answer accurately.

Q. (By Mr. O'Brien): What action did you take?

Mr. Lund: We will object to the question on the grounds it is incompetent, irrelevant and immaterial.

(Testimony of Walter L. Keen.)

Trial Examiner Greenberg: I assume that Mr. O'Brien is still pursuing the line of inquiry which he indicated, and I will overrule the objection.

Mr. O'Brien: Would you read the question?

(The question was read.)

The Witness: I inquired of my Department heads as to whether or not to their knowledge there were any members of the American Federation of Labor among our employees.

Q. (By Mr. O'Brien): And what replies did you receive?

Mr. Lund: I object to the question on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Greenberg: Overruled.

The Witness: It was stated by some of them that they had heard some discussions on the part of a few of the women employees regarding the A. F. of L. The number of employees whose names were mentioned in any way in that respect, as either having commented or in any way related, was either five or six of the women employees.

Q. Again calling your attention to the first of December of 1948, which is approximately this time, at that time did you [251] have a contract with the Amalgamated?

A. I don't believe it was December the first, 1948; I believe it was several months before that.

Mr. Lund: It is all immaterial. I might offer the fact in order to get the accurate date of the Regional Director's letter, if I have got it.

(Testimony of Walter L. Keen.)

We will stipulate, if you want to, that the Regional Director's letter to Lee's was dated October 29, 1948. We will stipulate to that fact, but object to its admission as being incompetent, irrelevant and immaterial and not within the issues of the pleadings, and barred by the provisions of the Statute of Limitations of the Act.

Mr. O'Brien: Thank you very kindly.

Trial Examiner Greenberg: Will you accept that statement?

Mr. O'Brien: I will accept that statement as accurate. It is accurate.

Q. (By Mr. O'Brien): I show you General Counsel's Exhibit 3 for identification, and as of October of 1948, after you received this letter from the Regional Director, was that the contract which you had in effect with the Amalgamated?

A. Yes, I believe it was.

Q. During that period had you been deducting dues from your employees?

Mr. Lund: Wait a minute. I object to the question on the [252] ground it is incompetent, irrelevant and immaterial, and renew at this time my motion for the Trial Examiner to strike paragraph nine of the complaint, on the basis of the Board's decision I cited this morning.

Trial Examiner Greenberg: Same ruling. The objection is overruled.

Mr. Lund: This morning you reserved your ruling, as I recall. You were going to examine the case.

Trial Examiner Greenberg: You are now direct-

(Testimony of Walter L. Keen.)

ing the objection to any material about dues directions?

Mr. Lund: That's right.

Trial Examiner Greenberg: I will reserve the ruling on your objection and will allow the witness at this time to answer, subject to a possible ruling by the Trial Examiner that the material should be stricken from the record. In other words. I am assuming you have a standing motion to strike any material pertaining to this subject.

Mr. Lund: It won't be necessary for me to renew my objection each time.

Trial Examiner Greenberg: No. It will save a lot of time if we have that understanding.

Mr. O'Brien: Would you like to have the question read?

The Witness: Yes, will you read it?

(The question was read.)

The Witness: Yes. [253]

Q. (By Mr. O'Brien): By that you mean the period from October through December, 1948?

Mr. Lund: I object to that question on the additional ground that it is clearly outside the statutory period.

Mr. Gilbert: I submit that it is background information that is admissible as evidence.

Trial Examiner Greenberg: I will overrule the objection.

Q. (By Mr. O'Brien): Now, I show you General Counsel's Exhibit No. 7, presently rejected.

(Testimony of Walter L. Keen.)

Trial Examiner Greenberg: You didn't get an answer.

Mr. Gilbert: I don't think we have an answer to that last question.

Mr. O'Brien: Would you read the question, Mr. Reporter?

(The question was read.)

A. Yes.

Q. By Mr. O'Brien): Now, disregarding this card on the outside I ask you if you received a copy of this letter?

Mr. Lund: Wait a minute. I object to the question on the grounds it is incompetent, irrelevant and immaterial. That again goes back to the R petition. You have excluded that exhibit.

Mr. Rissman: That is the same rejected exhibit.

Mr. O'Brien: That is the same rejected exhibit dated December 3rd, 1948.

Trial Examiner Greenberg: I will now ask you again [254] what is the purpose of this line of inquiry?

Mr. Lund: As a matter of fact, there is a stipulation in the record that that letter was mailed and received on or about that time.

Mr. O'Brien: That's right.

Trial Examiner Greenberg: Do you withdraw your objection?

Mr. Lund: It is already covered through the stipulation. No testimony by this witness could be received to contradict that stipulation.

(Testimony of Walter L. Keen.)

Mr. O'Brien: I will take that then and withdraw my question.

Q. (By Mr. O'Brien): And it was on or about the 17th day of December that you signed this contract which is General Counsel's Exhibit 4, is that right, sir? A. Yes.

Q. This is it, this one here (indicating)?

A. Yes.

Q. Will you tell us what you remember about Jackson's discharge? Is there anything you remember about Mr. Jackson?

A. Which do you want me to tell you about, anything I remember about Mr. Jackson, or anything about his discharge?

Q. I am sorry. Do you know when he was hired?

A. November, 1947.

Q. In November of 1947 was he hired by [255] you? A. No.

Q. By who, sir?

A. By the Department head of the men's department.

Q. His name was what, sir? A. Mr. Fink.

Q. What was Mr. Jackson's job?

A. Furnishings salesman.

Q. When was he discharged?

A. May, 1949.

Q. By whom? A. Mr. Henry.

Q. Mr. Henry's job was what, sir?

A. He is the Manager of our collection department.

(Testimony of Walter L. Keen.)

Q. What was Mr. Jackson's job during that period, from November of 1947 to May of 1949?

A. For a portion of that time he continued to be a salesman.

Q. Salesman in the men's department?

A. Men's department.

Q. That would be suits and——

A. Men's furnishings.

Q. Neckties and items like that?

A. Yes. He was not a suit salesman. Having proved unfitted for that, he was moved to the collection department, I believe, in January of 1948.

Q. In January of 1948 he was moved to [256] the——

A. Collection department, and he remained in that department until the time of his discharge.

Q. What was his job in the collection department?

A. Regular credit and collection work having to do with the checking of accounts, and some certain duties having to do with the taking of credit applications.

Q. Would that be strictly a clerical desk job?

A. No, that was not a clerical desk job; it was work which entailed direct contact with customers.

Q. Would you call that leg work?

A. No, it wasn't leg work; it was office work and phone work. He never was outside the store in the course of his work. That work was all conducted on the premises.

Q. What was the reason for his discharge?

(Testimony of Walter L. Keen.)

A. He was discharged as a part of an overall cutting down program which was put into effect at that time because of business conditions.

Q. Has his job in the collection department ever been filled? A. No.

Q. I assume your staff of permanent employees has remained the same over the last four years, about 60 permanent employees?

A. Approximately.

Q. Of course, during Christmas and rush seasons, why, you have to put on a large number of help? A. Of extra help. [257]

Q. In your inquiries in the fall of 1948 had anyone mentioned Mr. Jackson's name?

A. No one mentioned Mr. Jackson.

Q. In your inquiries during the fall of 1948, had any of your supervisors mentioned Mr. Jackson's name? A. No.

Trial Examiner Greenberg: Do you mean did they mentioned him as being interested in the A. F. of L., is that what you mean?

Q. (By Mr. O'Brien): The testimony so far is that Mr. Keen had acquired when this A. F. of L. petition was filed and certain names were mentioned. I haven't inquired as to who they were, but I just want to know specifically whether Mr. Jackson's name was mentioned?

A. His name was not mentioned.

Q. Do you know whether or not Mr. Jackson's dues were automatically checked off to the Amalgamated?

(Testimony of Walter L. Keen.)

Mr. Lund: Wait a minute. Counsel ought to remove the word "automatic." It calls for a conclusion.

Q. (By Mr. O'Brien): Do you know if Mr. Jackson's dues were checked off to the Amalgamated? A. I don't know specifically.

Q. But your intention was to comply with the contract and check off everyone's dues, is that right?

Mr. Lund: Wait a minute. I object to the question on [258] the grounds that the only contract in evidence herein does not have any reference to check-off. It assumes a fact not in evidence.

Q. (By Mr. O'Brien): I think your testimony, sir, was that dues had been deducted for employees?

A. Yes.

Q. In the Amalgamated? A. Yes.

Q. And that meant all the employees, did it not, sir? A. No.

Q. Just employees who were members of the Amalgamated?

A. I am not sure that it included all of those either.

Trial Examiner Greenberg: You were in general charge of the management of the store, were you not?

The Witness: Yes.

Q. Did you have anything to do with checking off the dues? Would it be under your general direction?

The Witness: My general direction, yes.

(Testimony of Walter L. Keen.)

Trial Examiner Greenberg: What were your instructions in regard to which employees would have their dues deducted and which wouldn't?

The Witness: I gave none, because every arrangement there was already in existence at the time I took over as the Manager, and I never had occasion to give instructions. [259]

Trial Examiner Greenberg: Do you know what that arrangement was?

Mr. Lund: Wait a minute. Apparently the witness has indicated that he has no knowledge about it other than through hearsay.

Trial Examiner Greenberg: He said there was an arrangement in effect at the time he assumed the management of the store, and that he didn't disturb that arrangement, is that correct?

The Witness: Yes.

Trial Examiner Greenberg: I am asking do you know what that arrangement was?

The Witness: I knew through perusing employee's records, their pay roll records, that I would see notations on there which meant Union dues deductions. As to the extent and unanimity of such, of course, I didn't inquire.

Mr. Lund: I have got something that might assist Mr. O'Brien and shorten this inquiry.

Trial Examiner Greenberg: Off the record.

(Discussion outside the record.)

Trial Examiner Greenberg: On the record.

Q. (By Mr. O'Brien): Did you make any check

(Testimony of Walter L. Keen.)

to find out whether or not Mr. Jackson had dues checked off to the Amalgamated?

A. No. [260]

Q. You didn't? A. No.

Q. At least prior to his discharge you don't know whether he was a member of the Amalgamated or not? A. I don't know specifically.

Q. Of your own personal knowledge you don't know whether he was a member of the Clerks?

A. No.

Q. You don't know whether he engaged in any activity on behalf of the Clerks?

A. No, I don't.

Mr. O'Brien: That is all.

Trial Examiner Greenberg: Aside from any personal knowledge that you might have with respect to those facts, did anyone ever give you any information to the effect that Mr. Jackson was a member of or active on behalf of the Retail Clerks? [261]

The Witness: During his employment?

Trial Examiner Greenberg: Yes, prior to his discharge.

The Witness: Not prior to his discharge.

Q. (By Mr. Gilbert): When did you say you became general manager of Lee's?

A. 1944, I believe it was, in the fall of 1944.

Q. During the period since you have been manager there, to your knowledge has there ever been a National Labor Relations Board certification of the Amalgamated Clothing Workers as representative for Lee's employees?

(Testimony of Walter L. Keen.)

Mr. Rissman: I object.

Mr. O'Brien: I think I will join in the objection. It is admitted.

Mr. Gilbert: It is admitted as to Federal; it is not admitted——

Mr. Lund: I object to the question and call your Honor's attention to the fact that over our objection inquiry was permitted by Mr. O'Brien concerning hearsay, and then there was testimony from other witnesses concerning Federal. For all the other reasons plus accumulative evidence we object to the question.

Mr. Gilbert: There is no testimony on this point.

Trial Examiner Greenberg: I will overrule the objection.

Do you recall the question?

Q. (By Mr. Gilbert): NLRB certification of the Amalgamated as [262] representative of Lee's employees.

A. Not to my knowledge.

Q. To your knowledge, was there ever an election conducted among your employees by any agency to determine whether or not a majority wanted to be represented by the Amalgamated Clothing Workers?

Mr. Lund: I want to make an objection to the preceding question. He asked him since the period he was general manager—is that what you mean?

Mr. Gilbert: It related to the same period. All of these questions relate to the same period.

(Testimony of Walter L. Keen.)

Mr. Rissman: May I have a continuing objection?

Mr. Lund: And may I also have a continuing objection?

Trial Examiner Greenberg: In admitting the testimony I am doing so because I think there might be possible relevancy to the issue of assistance. I am not thereby passing on what weight is to be given to the testimony, and the objections which are now pending are overruled.

The Witness: I don't know of any election.

Q. (By Mr. Gilbert): You don't know of any check of union applications against pay roll records or other similar card check having taken place during that period?

A. By the employees' cards, you mean?

Q. Yes. A. No. [263]

Mr. Gilbert: No further questions.

Trial Examiner Greenberg: Anything further of this witness?

I guess that is all, Mr. Keen. Thank you, Mr. Keen.

Mr. O'Brien: Thank you very kindly, sir. [264]

* * *

Mr. Lund: I take it your sales by your store are all made to residents in the Southern California area? You don't ship sales outside of California?

The Witness: Yes. [288]

* * *

Trial Examiner Greenberg: I assume, then, that that closes the case, except that Mr. Lund has a motion.

Mr. Lund: Everybody has indicated on the record that they have rested their case. My motion is to strike from the record all testimony and exhibits with reference to the check-off, at least so far as they pertain to Respondent Lee's.

You will recall when the evidence was admitted along that line I objected on the basis that the whole allegation of the complaint was immaterial. You were reserving judgment on the motion to strike Paragraph 9 of the Complaint and suggested that a motion to strike all the testimony concerning check-off would be appropriate at a later time, and I have a standing motion to that line of testimony. Inasmuch as this will probably be the last time to make my motion I make it now.

Trial Examiner Greenberg: I will reserve ruling on that motion and rule on it in my intermediate report.

Mr. Ladar: I make that same motion as to Federal. [295]

Trial Examiner Greenberg: Same ruling.

Mr. Rissman: I make it as to the entire record.

Trial Examiner Greenberg: To strike the entire record?

Mr. Rissman: To strike the testimony with respect to check-off as to any party.

Trial Examiner Greenberg: Same ruling.

Mr. Lund: I am not going to make it, but you know we feel that there is no commerce here and

the whole thing should be dismissed, but that will be determined by the ruling in your intermediate report.

Trial Examiner Greenberg: I will reserve ruling on Mr. Lund's motion to dismiss the complaint in its entirety as to Respondent Lee's.

Mr. Ladar: May the record show that on behalf of Federal I make a motion to dismiss the complaint in its entirety as to Respondent Federal.

Trial Examiner Greenberg: Same ruling.

Mr. Lund: I will argue in my brief, so I think I might make a motion now anticipating that you will reserve ruling until your intermediate report and after you have had a chance to study the briefs of the parties, and that is one of the motions that I made at the outset, which I think has considerable merit; the fourth motion that we made to strike on the basis of failure to comply with the six-month limitation period, all of Paragraphs 7, 8, 9, 12 [296] and 14 and each of them and the reference in Paragraph 19 to subsection (2) of Section 8 (a) of the Act.

We move to strike all those allegations or the alternative.

Trial Examiner Greenberg: You are renewing your motion?

Mr. Lund: That is right.

Trial Examiner Greenberg: I will reserve the motion.

Mr. Rissman: I want to move now to dismiss the entire complaint for the following reasons: First, that to proceed on this complaint even

though one of the respondents may technically be in commerce, as the Board has at times interpreted that phrase, it would not effectuate the policies of the Act to assert jurisdiction over any of these respondents.

Secondly, I want to point out that the position of the Amalgamated is one of taking no position on this subject. It is the theory of the General Counsel, as far as I have been able to discern any theory from the proof presented in this hearing, that the Board should assert jurisdiction over Respondent Lee's and inferentially over the stores other than Federal by virtue of the fact that Federal has one store in a state other than California.

Inasmuch as that is a theory predicated upon bargaining unit, the Amalgamated takes no position with respect to it. Inasmuch as the theory of either of the respondents may be predicated upon the theory of a single bargaining unit or [297] a bargaining union limited to any one employer in this group, we take no position there.

The reason we take no position on bargaining unit is because we think that is not a matter which is in issue in this hearing and if it is necessary to take a position on unit, we will do so in an appropriate proceeding.

Trial Examiner Greenberg: I didn't understand what you said at the beginning of your remarks. Were you making a motion for dismissal on jurisdictional grounds, of limiting it solely to the theory that it would not effectuate the policies of the Act to assert jurisdiction over these respondents?

Mr. Rissman: I am practical enough to know, and assume lawyer enough to realize, that the Board could, if it wanted to, assert jurisdiction over any retail operation. Keeping in mind, however, the Board's policy, not Mr. Denham's, but the Board's policy, in asserting jurisdiction over retail operations only where the policies of the Act would be effectuated.

I make a motion to dismiss, keeping in mind a recent decision of the Board in a case coming out of this region in the matter of Esquire, Incorporated—I don't have the citation—it was decided about a month ago—in which the Board found that, although the operations of the employer were not unrelated to commerce, the petition in that [298] case was dismissed because the Board felt it would not effectuate the policies of the Act to assert jurisdiction.

Trial Examiner Greenberg: I reserve the motion. [299]

* * *

Trial Examiner Greenberg: I would like to address especially to Mr. O'Brien the request that in his memorandum——

Mr. Ladar: Do you want this on the record?

Trial Examiner Greenberg: Yes.

——he state exactly what theory he proceeds upon in support of his assertion that the Board should assert jurisdiction over the respondents in this case, first, with respect to Federal. There isn't as much question in my mind, frankly, with regard to the respondent Federal as there is with regard to the

operations of respondent Lee's. At any rate, I would like some authority to show what the Board's policy has been with respect to enterprises.

With respect to Federal and with respect to Lee's, I would like these two questions answered: One, standing alone, is it the sort of enterprise over which the Board in its discretion customarily asserts jurisdiction? You have to take the position, being a representative of the General Counsel, that the Board has no power to dismiss the Complaint solely on policy grounds, and if it has technical jurisdiction, it must assert it once a Complaint is issued.

I am not assuming to dictate to you whether you want to reargue that question to me or not. I don't request that you do so. I think I am pretty well acquainted with the respective points of view with respect to that. [301]

Assuming for the sake of argument that the Board will continue to exercise its discretion in that matter, one does it have jurisdiction of the Lee's Department Store? What is the precedent? Has it customarily asserted it? You can assert any arguments you wish as to whether it should assert it in this case.

Standing alone, if you think it is the kind of case that the Board wouldn't customarily assert jurisdiction, why should it do so in this case? Just because there has been a consolidation of the hearing with another respondent? Those are quite obviously the matters with respect to jurisdiction which I think will need clarification. [302]

Now, with respect to the issue raised by Mr. Lund, I at first denied his motion to strike from the record testimony with respect to the check-off dues and then later reserved ruling, and I certainly don't want to indicate by that that my mind is closed. I think he has raised a substantial legal issue there and I would like to hear some discussion with respect to what extent, if any, the deduction of union dues from an employee's pay without the employer having received an individual authorization to do so constitutes an unfair labor practice, and if it does constitute an unfair labor practice at all, under what circumstances—and I believe Mr. Lund has cited to us the very recent case of *Salant and Salant*—the Board makes it quite clear that standing alone such conduct on the part of an employer does not constitute an unfair labor practice. There is nothing in the Act which makes it an unfair labor practice for an employer to make such check-offs even though not authorized by the [303] individual employee.

Apparently by your insistence in having that evidence admitted and given weight, you insist that under the circumstances of this case that the check-offs to the extent that they took place do constitute unfair labor practices. I would like to know why. What is your theory on that?

Now, turning to respondents' counsel, I don't want to be disingenuous about it. I have certain preliminary thoughts on the matter.

Mr. Lund, I just want to call your attention to my initial reaction to the *Salant & Salant* case. That

while the Board says that standing alone the unauthorized deductions do not constitute an unfair labor practice, if the deductions are on behalf of the union which has been illegally assisted by the employer, then it seems to me, at least initially—I haven't had a chance to give too extensive consideration to the meaning of that case—it seems to me taken in conjunction with the other acts of illegal assistance, such unauthorized deductions would constitute an unfair labor practice and therefore be a violation of Section 8 (a) (1) and 8 (2) of the Act. I think you have to grapple with that issue in your briefs, and so does Mr. Ladar.

Mr. Ladar: I understand.

Trial Examiner Greenberg: The question of the discharges [304] in this case it seems to me are comparatively simple. I think with respect to one of them there is quite a sharp conflict of fact. I will simply have to resolve that the best I can.

I can't think of any specific questions at this time that will trouble me. You will argue out the factual issue.

Let me ask this right here: There isn't any dispute as to the fact that there was a contract entered into on December 17, 1948, between the two respondents and the Amalgamated, which provided for a union shop, and there isn't any dispute about that clause, that the union security clause in the contract was not preceded by any election such as called for by the Amended Act?

Mr. Ladar: It is admitted by the Act.

Trial Examiner Greenberg: There was no au-

thorization of the union security clause secured as a result of a required election. That being so, it seems to me that the Resnick case pretty well settles the question so far as the Board authority is concerned.

Mr. Lund: If there is jurisdiction.

Trial Examiner Greenberg: That's right, if there is jurisdiction, assuming that, of course. If the contract is by Board precedent illegal, that it constitutes a violation of Section 8 (a) (1) of the Act, and it constitutes illegal assistance in violation of 8 (a) (2) of the Act, it would [305] follow that the remedy would be, according to the Resnick case, that this contract be set aside as illegal.

Mr. Lund: Is there any point in arguing before the Trial Examiner that the remedy is the Resnick case—the whole contract is illegal and would not effectuate the policies of the Act in view of the Board's decisions?

Trial Examiner Greenberg: While Trial Examiners are independent to the extent that they make fact findings and they may resolve questions of law according to their own views—like a Judge, who is also independent—a Trial Examiner is bound by precedence, and Board decisions are precedents for Trial Examiners.

As a matter of fact, I can tell you on the record that I was the Trial Examiner in the Resnick case, and to the extent that the Board applied a broader remedy, I was commended and I was overruled in that case. I certainly consider the Board's decision in the Resnick case binding upon me.

Mr. Rissman: Except that it probably should be raised before the Trial Examiner.

Trial Examiner Greenberg: To preserve your rights before the Board. I think the Board might be open to conviction on the subject. They have been known to change their minds.

Mr. Rissman: The Board has changed since then, too.

Trial Examiner Greenberg: I think we have covered about [306] everything that comes to my mind at present. There is one further question about the Statute of Limitations which has been raised. I think I made a statement on the record that I view the section of the Act which contains this limitation as a Statute of Limitations and not as a rule of evidence. While I can't make findings of unfair labor practices with respect to—technically no complaint can issue with respect to the commission of unfair labor practices more than six months preceding the serving of charges, yet events happening in the preceding period can be considered, it seems to me, in order to understand the sequence of events and to give significance to the events which did happen in the six months period.

Mr. Lund: How can you hold a union provision illegal though executed more than six months prior to the charge?

Trial Examiner Greenberg: It wouldn't necessarily have to hold that the execution of the contract was illegal if it took place prior to the six months, but you would have the right to consider it and to find subsequent enforcement of that, if it is an

illegal contract, constituted unfair labor practices.
I am indicating my thinking as I sit here.

Mr. O'Brien: I don't think it is in point at all.

Mr. Lund: I do, the Goddal Case. [307]

* * *

Received March 30, 1950.

In the United States Court of Appeals
for the Ninth Circuit

No.

LEO KATZ, MINDA KATZ, OTTO KATZ, LEE-
MOND KATZ, PHIL KATES, DOROTHY
KATES, ELY ELIAS, BERTHA ELIAS,
JULIAN ELIAS and WALTER L. KEEN,
d/b/a LEE'S DEPARTMENT STORE,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board—Series 5, as amended, (redesignated Section 102.87, 14 F. R. 78), hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a con-

solidated proceeding had before said Board, entitled, "In the Matter of Federal Stores Division of Spiegel, Inc., and Retail Clerks International Association, A. F. of L., and Amalgamated Clothing Workers of America, Local Union No. 81, CIO, Party to the Contract," and "In the Matter of Leo Katz, Minda Katz, Otto Katz, Leomond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, d/b/a Lee's Department Store and Retail Clerks International Association, A. F. of L. and Amalgamated Clothing Workers of America, Local Union No. 81, CIO, Party to the Contract," the same being known as Cases Nos. 21-CA-420 and 21-CA-481, respectively, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Isadore Greenberg Trial Examiner for the National Labor Relations Board, dated March 7, 1950.

(2) Stenographic transcript of testimony taken before Trial Examiner Greenberg on March 7 and 8, 1950, together with all exhibits introduced in evidence, also all rejected exhibits.

(3) Stipulations of the parties for correction of the transcript of record, dated April 28, 1950. (Ap-

proved in the Board's Decision and Order of October 4, 1950, page 2, footnote 1.)

(4) Letter from Federal Stores Division of Spiegel, Inc., (Respondent before the Board in Case No. 21-CA-420, hereinafter referred to as Federal Stores), dated March 17, 1950, requesting extension of time to file brief with the Trial Examiner.

(5) Copy of Chief Trial Examiner's telegram, dated March 20, 1950, granting all parties extension of time to file briefs.

(6) Petitioners' (Respondents before the Board in Case No. 21-CA-481) telegram, dated April 7, 1950, requesting extension of time to file brief with the Trial Examiner.

(7) Copy of Chief Trial Examiner's telegram, dated April 7, 1950, granting all parties further extension of time to file briefs.

(8) Copy of Trial Examiner Greenberg's Intermediate Report, dated May 12, 1950, (annexed to Item 16 hereof), order transferring case to the Board, dated May 12, 1950, together with affidavit of service and United States Post Office return receipts thereof.

(9) Petitioners' telegram, dated May 29, 1950, requesting extension of time for filing exceptions and brief.

(10) Letter from Federal Stores Division of Spiegel, Inc., dated May 31, 1950, requesting extension of time for filing exceptions and brief.

(11) Copy of telegram, dated May 31, 1950, granting all parties extension of time for filing exceptions and brief.

(12) Letter from Federal Stores, dated June 3, 1950, requesting further extension of time to file exceptions.

(13) Copy of telegram, dated June 5, 1950, granting all parties further extension of time to file exceptions.

(14) Copy of Petitioners' exceptions to the proceedings and the Intermediate Report, received June 19, 1950.

(15) Copy of exceptions of Federal Stores to the Intermediate Report, received June 19, 1950.

(16) Copy of Decision and Order issued by the National Labor Relations Board on October 4, 1950, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 9th day of March, 1951.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National Labor Relations
Board.

[Endorsed]: No. 12827. United States Court of Appeals for the Ninth Circuit. Leo Katz, Minda Katz, Otto Katz, Leemond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, doing Business as Lee's Department Store, Petitioners, vs. National Labor Relations Board, Respondent. Transcript of Record. Petition for Review and Petition for Enforcement of Order of National Labor Relations Board.

Filed March 13, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED ON
RE APPEAL

Petitioners, Leo Katz, Minda Katz, Otto Katz, Leomond Katz, Phil Kates, Dorothy Kates, Ely Elias, Bertha Elias, Julian Elias and Walter L. Keen, d/b/a Lee's Department Store, propose on their appeal to the Circuit Court for the Ninth Circuit to rely on the following points as error:

(1) The National Labor Relations Board (hereinafter designated as the "Board") erred in refusing to grant the motion of Petitioners (Co-Respondents in the Board proceedings) to sever and separate the case involving these Petitioners from the case involving the other Co-Respondents below, Federal Stores Division of Spiegel. Inc.

(2) The Board erred in refusing to dismiss the entire proceedings for failure of the General Counsel to join an indispensable party in the proceedings below, as a party respondent, to wit, Amalgamated Clothing Workers of America, Local Union No. 81, CIO.

(3) The Board erred in not granting Petitioners' motions to strike paragraphs 7, 8, 9, 12 and 14 of the Complaint and the reference in paragraph 19 of the Complaint to Section 8 (a) (2) of the Act, and all evidence received thereunder, or in the alternative to dismiss the proceeding with reference to such allegations.

(4) The Board erred in determining that Petitioners were engaged in commerce within the meaning of the Labor Management Relations Act, in determining that it had jurisdiction over Petitioners, and in exercising jurisdiction over Petitioners.

(5) The Board erred in not granting Petitioners' motion to strike all the testimony relative to the check-off of union dues, and in not granting the other motions of Petitioners during the proceedings below.

(6) The Board's determination that Petitioners violated Section 8 (a) (1), (2), and (3), or any of said sections, of the Labor Management Relations Act by "keeping in existence" and "enforcing" the alleged union-security provision of the contract of December 17, 1948, between Petitioners and the Amalgamated Clothing Workers of America, Local Union No. 81, CIO, is not supported by the evidence and is contrary to law.

(7) The Board erred in determining that the activities of Petitioners have a close and substantial relation to interstate commerce and tend to lead to labor disputes burdening or obstructing interstate commerce.

(8) The Board's entire order relating to Petitioners (except the portion thereof dismissing the Complaint insofar as it alleges Petitioners "committed unfair labor practices by checking off Amalgamated dues from the pay of their employees"),

is not supported by the evidence, is illegal, and is contrary to the law.

LATHAM & WATKINS,

By /s/ R. W. LUND,

Attorneys for Petitioners.

Dated May 29, 1951.

[Endorsed]: Filed May 31, 1951.

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

To: The Clerk of Court, United States District
Court of Appeals for the Ninth Circuit:

Petitioners in the above-entitled action designate the following portions of the record and pleadings in the consolidated proceedings before the National Labor Relations Board, Case No. 21-CA-420 and Case No. 21-CA-481, which proceedings are more particularly described in the Petition for Review herein filed, as material to the consideration of the review herein:

(1) The following portions of the stenographic transcript of the testimony taken before Trial Examiner Isadore Greenberg on March 7 and 8, 1950: Title Page; Pages 1-70; Pages 139-184; Page 246, beginning at line 13, to Page 264, line 6; Page 288, beginning at line 5, to line 8 thereof; Page 295,

beginning at line 8, to Page 299, line 3; Page 301 to Page 302, line 12; Page 303, beginning at line 9, to Page 307, line 23.

(Note to Clerk: Unless otherwise designated, above transcript references to pages and lines include the last page and/or line named, i.e., the references are inclusive.)

(2) The following exhibits introduced in evidence: General Counsel Exhibits 1-A, 1-D, 1-G, 1-J, 1-K, 1-M, 1-N, 1-P, 1-R, 1-U, 2, 2-B, 3, 4, and 6.

(3) Trial Examiner Greenberg's Intermediate Report dated May 12, 1950.

(4) Order transferring case to the National Labor Relations Board, dated May 12, 1950.

(5) Petitioners' Exceptions to the Proceedings and the Intermediate Report, dated June 15, 1950.

(6) Decision and Order issued by the National Labor Relations Board on October 4, 1950.

(Note to Clerk: Do not include here a copy of the Intermediate Report annexed to the Decision and Order, for the Intermediate Report is already designated in Item (3) above.)

(7) Petition for Review of the Order of the National Labor Relations Board, subscribed and sworn to on January 25, 1951, and signed by Richard W. Lund.

(8) Notice of Filing of Petition for Review of the Order of the National Labor Relations Board,

dated January 24, 1950, and signed by Richard W. Lund.

(9) Affidavit of Service by Mail of the Notice of Filing of Petitioner for Review, executed by Wanneata Maddux, and subscribed and sworn to on January 24, 1950.

(10) Answer of the National Labor Relations Board to the Petition to Review Order and Request for Enforcement of said Order, dated March 9, 1951.

(11) Certificate of National Labor Relations Board certifying that certain documents annexed thereto constitute a full transcript of the proceedings before the Board, dated March 9, 1951.

(Note to Clerk: Do not include copies of the documents annexed to Item (11).)

(12) Designation of Contents of record on appeal, including caption, and service thereon.

(13) Petitioners' Statement of Points Relied on re Appeal.

(14) Clerk's certificate.

(Note to Clerk: A concise statement of the facts to be relied on by Petitioners is appended to this designation.)

(15) Stipulations of the parties for correction of the transcript of record, dated April 28, 1950.

(Approved in the Board's Decision and Order of
October 4, 1950, page 2, footnote 1.)

LATHAM & WATKINS,

By /s/ R. W. LUND,

Attorneys for Petitioners.

Dated May 29, 1951.

[Endorsed]: Filed May 31, 1951.

